TRADE MARK REGISTRATION
1905-1919

SECOND AND ENLARGED EDITION

BY
LEWIS BOYD SEBASTIAN
AND
F. E. BRAY AND J. Q. HENRIQUES

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THE LAW

OF

TRADE MARK REGISTRATION.

BY

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AUTHOR OF "THE LAW OF TRADE MARKS," ETC., ETC.

SECOND AND ENLARGED EDITION.

INCLUDING

AN INTRODUCTION TO THE LAW OF TRADE MARKS AND PASSING OFF, THE TRADE MARKS ACTS, 1905—1919, AND WAR AND PEACE LEGISLATION.

BY

THE AUTHOR

AND

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BOTH OF THE INNER TEMPLE, BARRISTERS-AT-LAW.

LONDON:

STEVENS AND SONS, LIMITED,

119 & 120, CHANCERY LANE,

Law Publishers.

1922.

Re cat
19/9/85

PREFACE

TO THE SECOND EDITION.

This is a new and enlarged edition of the writer's work on "The Law of Trade Mark Registration under the Trade Marks Act, 1905," published in 1906. The Fifth Edition of the larger work on "The Law of Trade Marks" was published in 1911, bringing the subject up to that date. Pending the issue of a further edition of the larger work, which has been unavoidably delayed, and may not be possible for some time to come, it has been felt that the present work was required for the purpose of dealing with the Trade Marks Act, 1919, and also of bringing the elucidation of the Act of 1905 up to date.

The Act of 1919 introduces a new species of registration, granted under less exacting conditions and conferring less valuable rights than registration under the principal Act, and regard must now be had to this Act in considering questions relating to registration. Certain problems are also likely to arise, at any rate temporarily, out of the special War and Peace legislation. The present work is intended to deal with these matters, and includes, in addition

to the annotated Acts, an Introduction in which the main outlines of Trade Mark Law are reviewed, and a number of Appendices containing other matters of importance.

The cases reported up to February, 1922, are referred to, so that it is hoped that the book will be found to contain all that is essential at the present time. References are given to the last edition of the larger work, which can be consulted when necessary.

It is due to Mr. BRAY to state here that most of the spade work has been done by him, and that any merit which new features of the book may be thought to possess should be mainly attributed to him. Mr. HENRIQUES has also given much valuable assistance.

L. B. S.

LINCOLN'S INN,
April, 1922.

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THE LAW

OF

TRADE MARK REGISTRATION.

GENERAL INTRODUCTION.

Section 1.—The Foundations of Trade Mark Law.

Sources of the Courts' authority.

The jurisdiction of the Courts in respect of trade marks is derived from three sources, the Common Law, the Principles of Equity, and Statutory Enactments. This last source of authority dates from the passing of the Trade Marks Registration Act, 1875, and the scope and effect of the legislative provisions now in force can only be properly understood if the function of a trade mark and the rights to which the use of such a mark give rise independently of the statutes are clearly appreciated.

Function of a trade mark.

The function of a trade mark is to give to a purchaser or possible purchaser an indication of the trade source from which the goods come, or the trade hands through which they pass on their way to the market (*a*). Where, therefore, a trader has been in the habit of marking the goods which he supplies with a particular mark, so that thereby persons purchasing goods of that description know them by the mark to be his goods, if any other trader were to adopt the same mark, he would substantially be representing his goods to be those of the trader who had previously adopted the mark. By so doing he would or might deceive the public, and also damage the other trader by depriving him of the profit on sales of his goods which the purchaser intended to buy, or by injuring his reputation if the goods passed off were of inferior quality, or, even if actual deception did not result, by reducing the value of the trade mark as a guide by which intending purchasers could recognise his goods.

(*a*) *Per* Bowen, L. J., in *Powell's T. M.* (1893), 10 R. P. C. 195, p. 200.

Origin of the Common Law action.

The Courts of Common Law found a means for giving some redress to a trader injured in this manner by adapting to the case the form of action well known as an action upon the case for deceit. The early history has been described by Mellish, L. J.:—"Originally, I apprehend, the right to bring an action in respect of the improper use of a trade mark arose out of the Common Law right to bring an action for a false representation, which, of course, must be a false representation made fraudulently (*b*). It differed from an ordinary action for false representation in this respect, that an action for false representation is generally brought by the person to whom the false representation is made; but in the case of the improper use of a trade mark, the Common Law Courts noticed that the false representation which is made by putting another man's trade mark, or the trade name of another manufacturer, on the goods which the wrongdoer sells, is calculated to do an injury not only to the person to whom the false or fraudulent representation is made, but to the manufacturer whose trade mark is imitated; and therefore the Common Law Courts held that such a manufacturer had a right of action for the improper use of the trade mark. Then the Common Law Courts extended the doctrine one step further, first, if I recollect rightly, in the case of *Sykes* v. *Sykes* (*c*). There it was held that although the representation was perfectly true as between the original vendor and the original purchaser, in this sense, that the original purchaser knew perfectly well who was the real manufacturer of the goods, and therefore was not deceived into believing that he had bought goods manufactured by another person, yet if the trade mark was put on the goods for the purpose of enabling the purchaser, when he came to resell the goods, to deceive any one of the public into thinking that he was purchasing the goods of the manufacturer to whom the trade mark properly belonged, then that was equally a deception, a selling of goods with a false representation which would give the original user of the trade mark a right of action (*d*). That was the Common Law right" (*e*).

(*b*) *E.g.*, *Crawshay* v. *Thompson* (1842), 4 Man. & G. 357.

(*c*) (1833), 3 B. & C. 541; and see *per* Lord Blackburn in *Singer Manufacturing Co.* v. *Loog* (1882), 8 A. C. 15.

(*d*) This would be, in the words of Wood, V.-C., in *Farina* v. *Silverlock* (1855), 1 K. & J. 509, "scattering over the world the means of enabling parties to commit frauds upon the plaintiffs."

(*e*) *Singer Manufacturing Co.* v. *Wilson* (1876), 2 Ch. D. 434, 453.

Progress in the Common Law Courts.

It is possible that this right was recognised as early as the reign of Queen Elizabeth (*f*); it was at any rate established in 1833, when a decision was given which indicates a marked departure from the rules governing the ordinary action for deceit. In *Blofield* v. *Payne* (*g*), the jury found that the defendant's goods, which had been sold in the plaintiff's wrappers, were not inferior to the plaintiff's goods, and awarded only nominal damages of one farthing. It was argued that judgment should be entered for the defendant, since actual damage was of the essence of the action for deceit. This argument was rejected, Littledale, J., saying: "The act of the defendant was a fraud against the plaintiff; and if it occasioned him no specified damage, it was still to a certain extent an invasion of his right."

This decision provokes two questions:—(1) If the plaintiff's cause of action is the invasion of a right, is there any reason for limiting the action to those cases in which the invasion is proved to be fraudulent? (2) What is the real nature of this "right" which was held to have been invaded? These questions were already in process of solution by the Courts of Equity at the time when the decision was given.

Proceedings in Equity.

In those Courts it had long been the practice to give protection to suitors by granting an injunction to restrain the commission or continuance of certain wrongful acts, and it was soon perceived that this remedy was particularly appropriate to cases of improper use of trade marks. At first such cases were treated on the same principles as they were at Common Law, and redress was refused where actual intentional fraud was not alleged and substantiated (*h*). But in 1838, in *Millington* v. *Fox* (*i*), the fact was recognised that when goods made by one man were put upon the market bearing the mark of another, the same evil effects were produced, whether the mark was so affixed for fraudulent purposes or with innocent intentions, and Lord Cottenham granted an injunction, although he stated in express terms that he saw no reason for thinking that there had been any fraudulent use.

(*f*) See *per* Doderidge, J., in *Southern* v. *How*, as reported in Popham, 144; the report in Cro. Jac. 471 differs.

(*g*) (1833), 4 B. & Ad. 410.

(*h*) See *per* Lord Langdale, M. R., in *Perry* v. *Truefitt*, 6 Beav. p. 73.

(*i*) 3 My. & Cr. 338.

Proof of fraud unnecessary.

The first of the questions suggested above as the result of the Common Law decisions was thus answered in the negative, and it has for long been settled that a trader who proves that a particular mark is distinctive of his goods can obtain an injunction to restrain another from using upon goods of the same description the same or a similar mark in a manner likely to deceive the public, whether fraudulent intention is proved or not (*k*).

Nature of the right invaded.

The second question—what is the nature of the right which is invaded?—has been the subject of some controversy among high authorities, those on the one side maintaining that there is a right of property, and that it is the need to protect such property which prompts the intervention of the Court (*l*), those on the other side denying or doubting the existence of property in a trade mark, and tracing the action of the Court to the need for suppressing conduct which, if not fraudulent in its inception, becomes fraudulent if persisted in after notice of the possibility of deception being caused thereby (*m*).

The controversy examined.

This controversy may seem academic, but it is of real importance on account of the light which it throws on the true nature of trade mark rights. The solution of the controversy would appear to lie in observing that each party has sought to isolate one of two aspects of the same wrongful act and, in doing so, has used language capable of misconstruction. Thus the probability that deception will result from the use of a mark by the defendant is unquestionably essential to the cause of action, but it is equally essential that the plaintiff in an action for infringement should prove that the deceptive mark is understood as indicating *his* goods, and not merely those of a third party (*n*). The first point shows that persistence

(*k*) *Singer Manufacturing Co.* v. *Wilson* (1877), 3 A. C. 376, at p. 391; *Edelsten* v. *Edelsten* (1863), 1 De G. J. & S. 185.

(*l*) *Leather Cloth Co.* v. *American Leather Cloth Co.* (1863), 4 De G. J. & S. 137, *per* Lord Westbury, at p. 142; *Ransome* v. *Graham* (1882), 51 L. J. Ch. p. 900, *per* Bacon, V.-C.

(*m*) *Perry* v. *Truefitt* (1843), 6 Beav. 66, *per* Lord Langdale; *Collins Co.* v. *Brown* (1857), 3 K. & J. 423; *McAndrew* v. *Bassett* (1864), 33 L. J. Ch. 561, *per* Page Wood, V.-C., at p. 563, 564; *Reddaway* v. *Banham*, (1896) A. C. 199, *per* Lord Herschell, at p. 209.

(*n*) *Richards* v. *Butcher* (1890), 7 R. P. C. 288; *Pinto* v. *Badman* (1891), 8 R. P. C. 181; *Dental Manufacturing Co.* v. *de Trey* (1912), 29 R. P. C. 617; and see *Levy* v. *Walker* (1879), 10 Ch. D. at p. 448; and, as to the case of a mortgagee who does not intend to use the mark, *Beazley* v. *Soares* (1882), 22 Ch. D. 660.

in the conduct complained of after knowledge of the result will be fraudulent; but as the action for infringement will succeed without proof of such knowledge, it would seem illogical to treat fraud as the foundation of the action. The second point shows that no relief will be given unless the plaintiff proves association of the mark with a business which is *his*. The expression "his" involves the notion of some form of property, and the criticism which has been levelled against the view that the protection of property is the motive of the Court's intervention would seem to be due to a looseness of expression which appears to identify that property with the mark itself (*o*). A Common Law mark itself is in no sense property; that which is damaged by the misuse of a trade mark, and which is accurately described as being property, is the goodwill of the business with which the trade mark is associated (*p*).

Goodwill.

What is goodwill? "It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation, and connection of a business. It is the attractive force which brings in custom . . . . It is very difficult to say that goodwill is not property. It is bought and sold every day. It may be acquired, I think, in any of the different ways in which property is usually acquired. When a man has got it he may keep it as his own. He may vindicate his exclusive right to it, if necessary, by process of law. He may dispose of it if he will—of course, under the conditions attaching to property of that nature" (*q*). "If goodwill is not property, it is difficult to say what is" (*r*).

Trade marks and goodwill.

Clearly the association between a business and a trade mark which enables a purchaser to recognise the goods emanating from that particular business is one of the "attractive forces which brings in custom." The existence of such a mark is, therefore, essentially an element which enhances the value of the goodwill

(*o*) Thus the Act of 1905 refers to a person as claiming to be the "proprietor" of a trade mark, an expression which may not be inapt to the case of a right conferred by statute in the nature of a monopoly, but is likely to lead to misconception in the case of Common Law trade marks.

(*p*) See *Spalding* v. *Gamage* (1915), 32 R. P. C. at p. 284; 35 R. P. C. at pp. 113, 117; *Burberry's* v. *Cording* (1909), 26 R. P. C. at p. 701.

(*q*) *Inland Revenue Commissioners* v. *Muller & Co.'s Margarine, Ltd.*, (1901) A. C. 217, *per* Lord Macnaghten, at p. 223.

(*r*) *Potter* v. *Inland Revenue Commissioners* (1854), 10 Exch. 147, at p. 154.

of a business. But the value derived from the trade mark is dependent upon the fact that its use conveys a representation that the goods emanate from a particular business. Hence it may be perceived that the two propositions, viz.: that the Court intervenes to protect the plaintiff's property, and that it only intervenes when the defendant's conduct involves misrepresentation, both follow from the inherent nature of trade mark rights (*s*).

Conclusion.

The conclusion which thus emerges is the inseparable connection between trade mark rights and the goodwill of a business. This conclusion might indeed have seemed to be obvious, but in spite of legal decisions of long standing (*t*), and in spite of express provisions in the Trade Marks Acts to prevent the separation of the statutory rights from the goodwill of the business which the marks are used to indicate (*u*), the misapprehension persists that a trade mark is something which may be bought and sold without regard to the representation which it conveys (*x*). It cannot, therefore, be too clearly emphasised that, although under the statute some rights can be obtained by registration, the mere adoption of a badge by a trader gives rise to no right to monopolise it (*y*). Its use by another trader, however morally objectionable, is only actionable when such use is proved to involve a representation as to trade origin (*z*), a condition which assumes the existence of the goodwill of a business which is the property of the plaintiff.

(*s*) See *per* Lord Westbury in *Leather Cloth Co.* v. *American Leather Cloth Co.* (1863), 4 De G. J. & S. at p. 141. Although, in general, the jurisdiction to protect property may be considered as concerned only with property in this country, and will undoubtedly be exercised according to the law of this country (*Rey* v. *Lecouturier* (1910), 27 R. P. C. p. 280; *Pinto* v. *Badman* (1891), 8 R. P. C. p. 192), it does not necessarily follow that when there is no goodwill here the Court cannot prevent conduct in this country intended to result in sales which will be deceptive abroad. See *Collins* v. *Brown* (1857), 3 K. & J. 423, though some of the expressions used in that case cannot be regarded as authoritative. As to what may amount to goodwill in this country, see *Panhard* v. *Panhard* (1901), 18 R. P. C. 405; *Magnolia Metal Co.'s T. M.* (1897), 14 R. P. C. p. 628; and contrast *Neuchatel Co.'s Appn.* (1913), 30 R. P. C. 349.

(*t*) *E.g.*, *Hall* v. *Barrows* (1863), 4 De G. J. & S. 150.

(*u*) Trade Marks Act, 1905, s. 22.

(*x*) As to the limits of assignability, see *Pinto* v. *Badman* (1891), 8 R. P. C. 181, and p. 72, *post;* and as to attempts to grant a licence, see p. 9.

(*y*) See *Singer Manufacturing Co.* v. *Loog* (1882), 18 Ch. D. at p. 412; and cf. cases of a mere intention to use: *Maxwell* v. *Hogg* (1867), L. R. 2 Ch. 307; *Civil Service Supply Assn.* v. *Dean* (1878), 13 Ch. D. 512.

(*z*) *Batty* v. *Hill* (1863), 1 H. & M. 264.

Such was the legal position before legislation was introduced. It involved some hardship upon traders in two respects. It was necessary, before protection could be obtained, to prove by evidence that the use of the mark conveyed a representation to the public, a process often of difficulty, and usually involving considerable expense, and one which had to be repeated whenever an action was brought. Further, there was no recognised source from which a trader selecting a mark to indicate his business could ascertain what marks had already been adopted. Hence he might involve himself in useless expense or litigation by adopting, in ignorance, the mark of another trader.

Unsatisfactory position before legislation.

The principal object of the legislation introduced was to remedy these two defects. A register was established, and registration of a mark conferred upon the person registered as "the proprietor" a certain limited monopoly in the use of the mark. The conditions of the monopoly were designed to assure to the proprietor, without the necessity of proving that the mark in fact distinguished his goods, approximately the rights which, on giving such proof, he could previously have established in the Courts. Registration was not compulsory but, in addition to the positive advantages afforded by the registration, it was provided that an action *for infringement* could not be instituted unless the mark was registered (*a*). The result of this prohibition was soon shown to be not entirely satisfactory. In order to prevent the indiscriminate monopolisation of marks, more especially words and names, the categories of registrable marks had been strictly limited, with the result that many marks which were in fact distinctive could not be registered. The hardship involved in the case of owners of such marks was partly met by an amending Act, which allowed an action for infringement to be brought in respect of marks used as trade marks before the passing of the Act of 1875, the registration of which had been refused (*b*). But the real protection of unregistered marks was secured by the exercise of the power of the Court to prevent the passing-off of spurious goods as genuine by the use of a mark which, though not registered, in fact distinguished the genuine goods of the trader who had adopted the mark as his trade mark. This power was expressly reserved by the Act of 1905 (*c*).

Main objects of legislation.

(*a*) **Trade Marks Act, 1875, s. 1.**

(*b*) Trade Marks Act, 1876, s. 1; and see now sect. 42 of the Act of 1905.

(*c*) Sect. 45. A limitation on the right has, however, been imposed by **sect. 6 of the Act of 1919: see p. 111.**

Infringement and passing-off.

In a passing-off action, if the plaintiff can prove that the defendant is using a mark which, by reason of its resemblance to the mark used by the plaintiff, is calculated to lead to the defendant's goods being passed off as the plaintiff's, he can obtain the same relief as in the case of an infringement of a registered mark. Consequently, the restriction imposed upon bringing an action for infringement, though it has led to the term "infringement" being usually confined to the action based upon the statutory title, is of less practical importance than might appear. The old rights in respect of unregistered marks still exist, but they must be enforced by an action for "passing-off" (see pp. 13 *et seq.*). As a matter of precaution, in view of possible attacks on the validity of the registration, a claim for passing-off is generally added in an action for infringement.

Statutory and non-statutory rights.

Although liberal extensions in the categories of marks for which registration may be obtained have led to a much larger number of marks being registered, it is none the less a fact to be constantly borne in mind that the legislation does not cover the whole field of trade mark law, and that the statutory and non-statutory rights exist together. Nor must the two be confused. The latter are founded on first principles, and the sources from which they can be ascertained are the judicial decisions and the logical consequences to be deduced therefrom. The former are essentially artificial rights, to be ascertained from the Acts of Parliament as interpreted by the Courts. To determine the rights of the parties to any dispute, it is generally necessary to examine both. The present work is mainly devoted to an examination of the statutory provisions, but in this introductory section and in those which follow, an attempt is made briefly to summarise the main principles of the old law, so far as may be necessary for the understanding of the new, and to point out the distinctions between the two.

Section 2.—What is a Trade Mark?

Definition.

At Common Law no exhaustive definition of a trade mark was necessary; if a mark distinguished the goods of one trader so as to be calculated to deceive when used on similar goods by another trader, the Common Law rights attached to it without reference to what the character of the mark might be. But with the advent

of legislation establishing a register of trade marks to which statutory privileges attached, some definition of what might be registered became necessary. The earlier Acts did not actually define a trade mark, but contained an enumeration of "essential particulars," one of which a mark must possess in order to be registrable, and a special provision for certain marks in use before the Act of 1875. The Act of 1905, whilst including a similar, though wider and simplified enumeration (*d*), introduced a definition of a trade mark for the purposes of the Act in the following terms (*e*):—"A trade mark shall mean a mark (*e*) used or proposed to be used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with or offering for sale."

Importance of the definition.

Except in certain specified cases (*f*), no evidence is required in order to obtain registration. Consequently, the mere adoption of a mark as a trade mark, followed by registration, is sufficient to entitle the proprietor *primâ facie* to the exclusive rights in respect of it which are granted by the statute (*g*). This fact constitutes a marked difference in principle between statutory and non-statutory trade marks. The express provisions of the statute which determine the validity or otherwise of the registration, and regulate the enjoyment of the rights granted, go far to assimilate the rights which in practice follow from registration to those which were previously recognised (*h*); but, apart from such express provisions, the terms of the definition itself may have an important bearing on the construction of the Act. Thus, provision is made for the removal of entries wrongly remaining on the register (*i*), and the question arises whether a mark can be said rightly to remain on the register, when the use made of it is such that it cannot any longer be considered to be a trade mark within the definition.

A licence inconsistent with the definition.

Experience shows, for instance, that in the mistaken notion as to what a trade mark really is, the proprietor of a trade mark will sometimes grant to another a so-called licence to use the mark upon goods which are not the goods of the proprietor by virtue of any

(*d*) Sect. 9. (*e*) Sect. 3, which also defines a "mark."

(*f*) See, as to word and name marks, sect. 9 and notes; and as to registration of marks used concurrently, sects. 19 to 21.

(*g*) See sects. 39, 40. (*h*) See p. 12, *post*. (*i*) Sect. 35, p. 79, *post*.

of the operations enumerated in the definition (*k*). Such a course can give the licensee no enforceable right against others, but prevents the licensor from interfering with the use of the trade mark by the licensee, and is therefore inconsistent with the intention that the mark should indicate the licensor's goods alone. It consequently imperils his mark, and it has been held that a trade mark so dealt with is liable to be removed from the register (*l*). The reference by Lord Shaw in that case to the words of the definition suggests that the ground for removal is that the entry wrongly remains on the register of trade marks, when, by the action of the proprietor, it has ceased to be a trade mark within the definition.

Abandonment.

Equally it would seem that a mark ceases to be a trade mark if the business which it serves to indicate is finally abandoned: and the mark can then be removed without waiting for the lapse of the period of non-user, for which special provision is made (*m*).

Misuse of a trade mark.

The same reasoning would seem to justify the removal of a trade mark where the proprietor, without granting an express licence or abandoning the mark, so uses the mark, or fails to prevent others from using it, that it comes into general use as the name of the article, and not as indicative of the particular trader (*n*).

A trade mark does not cease to be such because it is used to distinguish not only manufacture, &c., but also differentiation in quality: see p. 36.

What marks may be trade marks.

The question "what is a trade mark?" is not completely answered without a discussion as to the character of marks which may properly be classified as trade marks. So far as registration is concerned, this is considered in the notes to the Act (see pp. 49 *et seq.*); and so far as the matter arises in relation to cases independent of statutory rights, it is referred to elsewhere in the Introduction (see pp. 17, 22).

(*k*) Consent by the proprietor to the mark being applied to genuine goods is of course a legitimate and common practice: see p. 12, *post*.

(*l*) *Bowden Wire, Ltd.* v. *Bowden Brake, Ltd.* (1914), 31 R. P. C. 385; and see notes to sect. 22, *post*.

(*m*) See sects. 22 and 37, and *Pink* v. *Sharwood* (1913), 30 R. P. C. 725.

(*n*) See, however, as to the possibility of the position being affected by sect. 41, *Woodward* v. *Boulton Macro* (1915), 32 R. P. C. 173, and the comment on that case in *Imperial Tobacco Co.* v. *de Pasquali* (1918), 35 R.P.C. 185; and notes to sect. 41, p. 85.

Section 3.—The Character and Conditions of the Statutory Rights.

Parts A. and B. of the Register.

The Register of Trade Marks is now (*o*) divided into two parts. Part A. comprises all trade marks entered in the register at the commencement of the Act of 1919, and all trade marks subsequently registered under the Act of 1905. Part B. comprises all trade marks registered under Part I. of the Act of 1919, or removed thereto under that Act. There is a material difference between the effects of registration in the two parts. Registration in Part B., though it may facilitate registration abroad, creates no new right which did not exist in this country at Common Law or in Equity; it only affords a means by which the burden of proving such right may be discharged in the first instance (*p*). Registration in Part A., on the other hand, does give rise to a qualified statutory monopoly.

Registration in Part B.

Thus sect. 4 of the Act of 1919 provides that registration in Part B. shall be *primâ facie* evidence that the registered proprietor has the exclusive right to the use of the trade mark, and throws upon the defendant in an action for infringement the onus of showing that the user complained of is not calculated to deceive. It will therefore be observed that no new exclusive right is given by registration; the right referred to is that which, independently of the statute, belongs to a trader whose trade mark is distinctive of his goods. Consequently, except in relation to the onus of proof, the action for infringement in respect of a mark registered in Part B. is substantially the same as the old action in Equity (*q*).

Registration in Part A.

Subject to certain qualifications, registration in Part A., if valid, gives to the registered proprietor the exclusive right to the use of the registered trade mark upon or in connection with the goods in respect of which it is registered (*r*). This is a definite right conferred by statute, and its character therefore requires a close examination. What is meant by the phrase "exclusive right to use"? It is clear that a mark is "used" by any trader who deals in, offers, or advertises goods under that mark (*s*); but

(*o*) Sect. 1 of the Act of 1919.

(*p*) See notes to sect. 4 of the Act of 1919.

(*q*) *Pinto* v. *Badman* (1891), 8 R. P. C. 181; *Bow* v. *Hart* (1905), 22 R. P. C. 222, decided on similar words in the Act of 1883.

(*r*) Trade Marks Act, 1905, s. 39, and see notes, p. 85.

(*s*) Actions are commonly brought against retailers.

it is also clear that a trader who has applied his mark to goods and then sold them to a retailer, cannot thereupon claim to exclude the retailer from using the mark upon the goods so supplied to him. It has consequently been suggested that anyone may use the trade mark upon goods which are the genuine goods of the proprietor, and of the quality or description of the goods to which he himself applies the mark, as this cannot result in deception (*t*). In the case of a mark not registered under the Act of 1905, where the issue is as to the probability of deception, this would no doubt be the case; but there has been no decision that the same principle applies where the rights arise from valid registration, and do not depend primarily on the trade mark having actually acquired a distinctive meaning. It is possible that the question of infringement under the Act of 1905 may depend upon whether the mark has been used in connection with the goods with the consent of the proprietor, as it is sometimes the practice of a manufacturer to supply merchants of his goods with labels to be applied to them. Such consent will no doubt be implied when goods have been sold by the proprietor under the mark, or with knowledge that the goods are to be resold under the mark (*u*), and in some cases it may be implied if the proprietor has applied the mark, though he has not put the goods on to the market (*x*).

Statutory rights are artificial.

Whatever may be the correct view upon this point, it is clear that the exclusive rights conferred by sect. 39 are at best an artificial reproduction of the non-statutory rights which are founded upon first principles. The statutory rights, however, are dependent upon the registration being valid, and an action for infringement may be met by an application to rectify the register whenever the validity of the registration is open to attack. By means of the provisions which determine such validity, a closer approximation between the practical results of the statutory and non-statutory law has been achieved. Thus there are limitations upon the character of the marks admissible for registration under the Act of 1905 which effectually exclude marks inherently incapable of

(*t*) The cases cited in support of this proposition, viz.: *Farina* v. *Silverlock* (1855), 6 De G. M. & G. 214; 4 K. & J. 650; and *Siegert* v. *Findlater* (1878), 7 Ch. D. 801, are not authoritative as to the Act of 1905.

(*u*) *E.g.*, *Condy and Mitchell* v. *Taylor* (1887), 56 L. T. 891.

(*x*) *Burgoyne* v. *Godfree* (1905), 22 R. P. C. 168, illustrates the question of consent. In *Rey* v. *Lecouturier* (1910), 27 R. P. C. 268, there was no issue raised as to any liqueurs seized by the liquidator in a condition ready for sale.

becoming distinctive in fact (*y*); a limitation has been put on marks which are the name, or only practicable name, of patented articles or chemical substances (*z*); deceptive marks are excluded (*a*); non-user may destroy the validity of the registration (*b*); assignment of trade marks without the goodwill to which they are attached is prohibited (*c*); and there is a general power to remove marks wrongly remaining on the register (*d*). Further, notwithstanding registration by others, honest traders are protected in the use of their name, or that of their place of business, or a *bonâ fide* description of their goods (*e*), and may in certain cases establish concurrent rights in regard to marks registered by others (*f*). Broadly, therefore, it may be said that while the statute confers rights in respect of marks which are trade marks in embryo only, the other provisions of the Act are designed to secure that the trade marks so protected shall develop into trade marks to which protection would have been afforded at Common Law, and that the character of the protection given shall ultimately approximate to that given independently of the statute, though without the same difficulties in securing it.

Section 4.—The Actions for Passing-Off and Infringement.

Extent of statutory right.

The exclusive right to the use of a trade mark validly registered is enforceable by the action for infringement. The right extends to enable the proprietor to prevent the use on goods for which the mark is registered, not only of an exact copy of the mark, but of any mark which so nearly reproduces the distinguishing feature or features of the registered mark as to be likely to be mistaken for it (*g*).

If a plaintiff relies, for the purpose of proving the probability of deception, upon matters other than the resemblance between the defendant's mark and the distinguishing feature or features of his mark as registered, his claim must be based on passing off (*h*). It is, in any case, usually advisable to add such a claim in any action for infringement, not only in order to be able to rely on

(*y*) Trade Marks Act, 1905, s. 9.
(*z*) Trade Marks Act, 1919, s. 6.
(*a*) Trade Marks Act, 1905, ss. 11, 19.
(*b*) *Ibid.*, s. 37.
(*c*) *Ibid.*, s. 22.
(*d*) *Ibid.*, s. 35.
(*e*) *Ibid.*, s. 44.
(*f*) *Ibid.*, ss. 20, 21, 39, 41.
(*g*) *Tatem* v. *Gaumont* (1917), 34 R. P. C. 181; and see p. 28.
(*h*) *Ibid.*; and see *Alerdice* v. *Burke* (1916), 33 R. P. C. 341.

such other matters, but also as an alternative ground for relief in case the validity of the registration is successfully attacked (*i*), or the registration held not to extend to the goods in question (*k*).

The issues in trade mark and passing-off cases.

The distinction between claims for infringement and passing-off, so far as it now rests on the statutory provisions, has already been referred to (pp. 7, 8). But, apart from the statutory right, the term infringement may be reasonably applied to the type of passing-off action in which the plaintiff founds his claim on the existence of an unregistered trade mark distinctive of his goods. In such an action two questions arise: Does the mark used by the plaintiff in fact distinguish his goods? If so, is the mark used by the defendant calculated to deceive by reason of its resemblance to the plaintiff's mark? Where these two questions can be separately answered in the plaintiff's favour, infringement in its original meaning is established. But passing-off in relation to the supply of goods may be established without deciding these questions separately, the issue being generally the single issue: Is the defendant's conduct likely to result in goods which are not those of the plaintiff being passed off as and for such goods? (*l*). Consequently, although assistance in solving the two questions mentioned above may often be obtained from passing-off cases, care must be exercised in seeing how far the principles there laid down are applicable, and equal care is necessary in referring to cases on infringement or registration for assistance as to the principles applicable to actions for passing-off (*m*). The present section is not intended to do more than indicate the principles applied in passing-off cases sufficiently to enable their relevancy to these questions to be tested (*n*).

Passing-off by direct

The simplest case of actual passing-off occurs when a purchaser

(*i*) The claim for passing-off must be clearly pleaded; an amendment at the trial will sometimes, but not always, be allowed. See *Native Guano Co.* v. *Sewage Manure Co.* (1887), 4 R. P. C. 473; 8 R. P. C. 125; *Jay* v. *Ladler* (1888), 6 R. P. C. 136; and for a case of amendment before trial, *Rossell* v. *Hodges* (1918), 35 R. P. C. 285. The two claims do not constitute separate causes of action where there is only one matter of complaint. *Vernon* v. *Buchanan's Flour Mills*, 23 R. P. C. 17.

(*k*) *Hart* v. *Colley* (1890), 7 R. P. C. 93.

(*l*) *Magnolia Metal Co.* v. *Tandem Smelting Syndicate* (1900), 17 R. P. C. p. 486.

(*m*) The *Magnolia* case, *supra*, perhaps marks the end of a certain confusion, traceable in some stages of the *Singer* and *Camel Hair Belting* litigation, whereby a plain issue on passing-off may be lost sight of in an abstract discussion on trade-mark rights. For references, see Index of Cases, under *Singer* and *Reddaway* respectively.

(*n*) For a more exhaustive examination of the subject, reference should be

misrepresentation.

is induced to accept the goods of A. on the faith of a direct and untrue representation that they are the goods of B. Equally, where there is a known and ascertainable class or quality of A.'s goods, it is possible that goods which are not of that class or quality may be passed off by a representation that they are (*o*). Passing-off also occurs when a customer asks for A.'s goods and is led to accept the goods of B. by a substitution effected in such a way as to conceal the fact: but in such a case the shopkeeper is alone responsible, unless the get-up of the goods has contributed to the deception. There is no culpable substitution if the dealer makes it clear to the customer that the goods supplied are not those ordered (*p*).

Offers or advertisement.

Though no actual sale or deception takes place, an offer of goods accompanied by a similar false representation or concealment may be proof of conduct which the Court will restrain as likely to lead to passing-off. To give rise to a civil action, as distinguished from being a matter for criminal prosecution only, it must be shown that the representation would be understood to relate to the plaintiff's goods. The offer may be made by a tender of the actual goods, or by advertisement, but in the latter case it must be shown that the advertiser does intend to supply goods with reference to which the advertised description as to origin, or as to the goods being of a particular quality, is untrue. Generally, mere evidence that he has not got the genuine goods in stock, or may have difficulty in obtaining them, will not alone be sufficient (*q*).

made to the author's larger work on Trade Marks, or that of Sir Duncan Kerly, K.C.

(*o*) *Jameson* v. *Clarke* (1902), 19 R. P. C. 255; *Teacher* v. *Levy* (1906), 23 R. P. C. 117; *Spalding* v. *Gamage* (1915), 32 R. P. C. 273. Contrast *Burgoyne* v. *Godfree* (1905), 22 R. P. C. 168, 173; *Hunt, Roop, Teague & Co.* v. *Ehrmann* (1910), 27 R. P. C. 512; *Harris* v. *Warren* (1918), 35 R. P. C. 217, where a recognised distinction of class or quality was not established; and *Moseley* v. *Nathan* (1906), 23 R. P. C. 345, where an interlocutory injunction was refused. As to passing off a diluted article, see *Palestine Wine Co.* v. *Cohen* (1906), 23 R. P. C. 568. It should be observed that in *Spalding* v. *Gamage* the reference to a particular patent was in fact an unambiguous misrepresentation. As to cases where the meaning of the words or mark is ambiguous, see the judgment of Buckley, L. J., in C. A., 31 R. P. C. p. 137.

(*p*) *Bovril* v. *Bodega* (1916), 33 R. P. C. 153; *Pearson* v. *Valentine* (1917), 34 R. P. C. 267. Contrast *Silicate Paint Co.* v. *Smith* (1906), 23 R. P. C. 143. As to the circumstances which justify granting an injunction in such cases, see p. 37, *post*.

(*q*) Contrast *Ajello* v. *Worsley*, (1898) 1 Ch. 274, and *Moseley* v. *Nathan* (1906), 23 R. P. C. 345, with *Spalding* v. *Gamage* (1915), 32 R. P. C. 273. See also *Yeatman* v. *Homberger* (1912), 29 R. P. C. 645; *Jay* v. *Ladler* (1888), 6 R. P. C. 136; *Singer* v. *Wilson* (1877), 3 A. C. p. 389; *Singer* v. *British Empire Co.* (1903), 20 R. P. C. 313.

A printer of labels intended for use upon goods other than those for which the proprietor uses the mark may also be restrained (*r*).

Passing-off by other means.

More generally, passing-off is effected not by a direct misrepresentation capable of only one obvious meaning, but by the use of names, words, symbols, general get-up of goods, or any other such indication likely to produce the same effect as the direct misrepresentation (*s*). In such cases the probability of passing-off resulting will depend upon how such indications will be understood, and it becomes necessary to consider two questions: What is the material point of the representation which must be understood, so that if it is false on that point, passing-off may result? Who are the persons whose understanding it is material to consider in deciding whether any such indication involves a false representation on that point? (*t*).

How much must be understood.

It is mainly in regard to the first of these questions that the difference between cases of passing-off generally and the specialised type of trade mark case is most apparent. Thus the fundamental and original idea of a trade mark was that it should enable purchasers to distinguish certain goods from other goods of a like description, the goods so distinguished differing from the others *in this respect*, that, in relation to them, the proprietor of the mark had performed some particular function—manufacture, selection, or whatever it might be. Now it is clear that a person who understands that such a trade mark does differentiate goods in that way, and buys accordingly "by the mark," is likely to be deceived by the sale of the goods of another trader under that mark, and that he will be none the less deceived because he may happen to be ignorant of the actual identity of the trader whose goods the mark indicates (*u*). In fact the object of adopting a trade mark is often to provide a substitute for a name which will be more easily remembered and recognised. It is also clear that a person who understands that the mark does indicate the trade hands through which the article has passed, but does not know whether it indicates manufacture, selection, or the performance of some other function,

(*r*) *Farina* v. *Silverlock* (1855), 4 K. & J. 650; *Jameson* v. *Johnston* (1901), 18 R. P. C. 259; *De Kuyper* v. *Baird* (1903), 20 R. P. C. 581.

(*s*) A statement literally true may convey an untruth. *Massam* v. *Thorley* (1880), 14 Ch. D. p. 753. Cf. *Iron Ox Remedy Co.* v. *Co-operative Wholesale Soc.* (1907), 24 R. P. C. 425.

(*t*) As to this latter question, see p. 27, *post*.

(*u*) *Powell* v. *Birmingham Vinegar Co.* (1897), 14 R. P. C. 720; *Warwick Tyre Co.* v. *New Motor Co.* (1910), 27 R. P. C. p. 171.

is still liable to be misled by the use of the mark on the goods of another trader (*x*). The cases considered do not, however, exhaust the possible representations which an indication may convey to a purchaser. It often happens that a word is coined or adopted by a trader, and is then used by the public merely as the name which describes the article without in any way identifying it with any representation as to origin or class. To such a case Common Law trade mark rights, strictly speaking, can have no application, since a mark which conveys no representation as to origin cannot be an inducement to purchase goods on account of their origin.

Where, therefore, a word is used by the public as a name for an article, such as Yorkshire Relish, Apollinaris, or Gramophone, the question whether these words are good Common Law trade marks will depend upon whether the names are understood merely as names for the article, by whomsoever made, or as something more, viz.: the articles which emanate from a particular trader. Knowledge of the actual identity of the trader, or of the function which he performs, may not be material, but some representation as to trade origin is essential to constitute a trade mark independently of the statute.

Passing-off where a monopoly exists.

Passing-off may, nevertheless, be effected by the use of a name without any such understanding of its meaning, if in fact it is impossible for the article known by the name to be produced from any source except one. Thus, even if "Yorkshire Relish" was understood to mean no more than sauce prepared according to a certain recipe, as long as that recipe was a secret known only to one manufacturer, that manufacturer would lose his profit if a purchaser desirous of obtaining the article were induced by the use of the name to accept the sauce of another manufacturer as being the identical article which he required. A similar result would follow if "Apollinaris" meant no more than water bottled from a particular spring, so long as only one trader had the means of obtaining water from that spring, or again, if "Gramophone" meant an article made according to an existing patent, and a purchaser were deceived into thinking that he was getting the patented article by the use of the name, the patentee, if he alone made the article, would lose the profit he would have made on the sale of the article required by the purchaser (*y*).

(*x*) *European Blair Co.'s T. M.* (1896), 13 R. P. C. 600.
(*y*) See *Palmer's T. M.* (1883), 24 Ch. D. p. 520.

But if these names were understood only as names for the articles in question, when the secret became known, or access to the spring became open to others, or the patent expired, the names would become open to all who could supply the article (*z*). The distinction between the cases in which the possibility of passing-off depends only on the existence of a monopoly and true trade mark cases, is made clear by the consideration that in the former case the name is associated with the monopoly, and it is possible that there might be an assignment of the monopoly, without the assignment of the goodwill of any business, as in the case of a patent, which would in practice operate to transfer the sole power to apply the name during the currency of the patent.

So long as such a monopoly exists, a name applied to the article will not generally become distinctive of the manufacturer, because in the absence of competitors, the occasion to draw a distinction is unlikely to arise (*a*). The conditions when the monopoly will no longer exist may, however, be thought of before the time arrives, and so long as a description of the article, other than the trade name, exists, and is recognised by the public, the trade name may be distinctive in the true sense (*b*), although it is at the same time descriptive (*c*).

Proof of distinctiveness will no doubt be more difficult, as the existence of the monopoly may explain the fact that the name has been exclusively used by one trader, a circumstance which in other cases will usually be attributed to a general recognition that

(*z*) See *Powell* v. *Birmingham Vinegar Co.* (1896), *per* Lindley, L. J., 13 R. P. C. p. 252, and observations in H. L., 14 R. P. C. pp. 730, 732. The reservation there made as to the possibility of using the name without passing off is wide enough to exclude from the cases in which the names would become open, the case where the name is also understood to denote association with a particular trader. The names mentioned are only chosen as illustrations; actually, *Apollinaris* is registered (24 R. P. C. 436), *Gramophone* was refused (27 R. P. C. 689), and *Yorkshire Relish* was removed under the Act then in force (11 R. P. C. 4) as not being within the categories of registrable marks, but has since been registered under sect. 9 (5) of the Act of 1905 after an order by the Board of Trade.

(*a*) See *Siegert* v. *Findlater* (1878), 7 Ch. D. p. 813; *Leonard and Ellis' T. M.* (1884), 26 Ch. D. 288; *Linoleum Co.* v. *Nairn* (1878), 7 Ch. D. 834; *Palmer's T. M.*, 24 Ch. D. 504.

(*b*) The importance of the existence of an alternative name is recognised in the Act of 1919: see p. 111.

(*c*) *Burberry's* v. *Cording* (1909), 26 R. P. C. 693. See also cases on registration, p. 57.

the name is a trade mark (*d*). But where the article is one which requires particular skill or care in its production, it may be readily believed that the public will identify the article of the original manufacturer by the original name (*e*).

"System," "model," "quality," &c.

It should be observed that where a trade name is also descriptive, that name, in an appropriate context, may sometimes be used by another trader without risk of passing-off. Thus it was held that no action would lie for describing metal as "similar to magnolia" (*f*). So also the use of a trade name associated with such words as "type," "system," "model," or "quality" may be legitimate as a *bonâ fide* description, or may be a mere attempt to effect a fraud (*g*). A trade name may also be distinctive for one class of goods, but descriptive where applied to accessories (*h*). In other cases a name, not in itself distinctive, may be used with a deceptive addition, so as to lead to passing-off (*i*).

Name of goods—distinctive or descriptive.

On the question whether a name for goods is merely descriptive, or is also understood as distinguishing the goods of a particular trader, the following further considerations will usually be material:—The character of the name in question, the use made of it by the party claiming that it distinguishes his goods, and the function performed by that party in virtue of which he claims that goods so named are his.

Character of the name.

The character of the name is important, as a fanciful word is

(*d*) *Young* v. *Macrae* (1863), 9 Jur. N. S. 322.

(*e*) See *Massam* v. *Thorley* (1880), 14 Ch. D. p. 754, and *Rey* v. *Lecouturier* (1910), 27 R. P. C. 268, where stress is laid on two things which the liquidator could not acquire, the secret and the reputation of the monastery.

(*f*) *Magnolia Metal Co.* v. *Tandem Smelting Syndicate* (1900), 17 R. P. C. 477.

(*g*) Contrast *Singer* v. *Loog* (1882), 8 A. C. 15; *Singer* v. *Spence* (1893), 10 R. P. C. 297; *Singer* v. *British Empire Co.* (1903), 20 R. P. C. 313 (Singer system); *Gamage* v. *Randall* (1899), 16 R. P. C. p. 192 (Shorland type); *Burberry's* v. *Raper* (1906), 23 R. P. C. 170 ("identical with" in smaller type); *Bechstein* v. *Barker* (1910), 27 R. P. C. 484 (Bechstein model); *Vacuum Oil Co.* v. *Gooch* (1910), 27 R. P. C. 76 (Vacuum quality); *Armstrong Oiler Co.* v. *Patent Axle Box Co.* (1910), 27 R. P. C. 362 (Armstrong type); *A. V. Roe, Ltd.* v. *Aircraft Disposals Co.* (1920), 37 R. P. C. 249 (Avro type).

(*h*) Contrast *Gledhill* v. *British, &c. Paper Co.* (1911), 28 R. P. C. 714 (Gledhill rolls for a Gledhill cash till), with *Kodak* v. *London Stereoscopic Co.* (1903), 20 R. P. C. 337 (Kodak films); and see *Yost Typewriter Co.* v. *Typewriter Exchange Co.* (1902), 19 R. P. C. 422 (Yost pads for a Yost typewriter); *Neostyle Manufacturing Co.* v. *Ellams* (1904), 21 R. P. C. 185, 569 (Neostyle ink, &c. for a Neostyle machine).

(*i*) *E.g.*, by adding "the original": see *Cocks* v. *Chandler* (1871), L. R. 11 Eq. 446.

more likely to become distinctive than one which has a natural meaning apt to describe the goods (*k*). In the case of a name consisting of a combination of words, of which only a part is taken, the character of the different elements must be considered, and the use of parts which are naturally descriptive will not usually lead to deception (*l*).

Use made of the name.

If the party who claims that the name is distinctive has so used it as to encourage the public to adopt it as a descriptive term for an article characterised by features which are not dependent on manufacture, care, or quality, or anything else particularly associated with himself, then he will have great difficulty in proving that the name is distinctive of his goods, though registration of the name prior to his so using it may, except in the cases especially provided for by statute (*m*), enable him to maintain an exclusive right to it (*n*). Care should therefore be taken as to the form in which an article is advertised under a trade name, and any use of it by trade papers or otherwise in a context likely to lead the public to treat the trade name as purely descriptive should be checked.

Function performed by the trader.

A mere selector or retailer will usually have more difficulty than a producer in showing that a name used to describe an article which he sells is associated with the function which he performs, so as to become his trade mark, or a means by which goods may be passed off as his (*o*).

Descriptive terms.

Closely akin to the cases of the name of the goods are those in which passing-off is alleged to be the probable result of the use of a term which is naturally descriptive. Such terms may become distinctive if long user has acquired for them a secondary meaning, so that the primary meaning, if not lost, is, in the particular

(*k*) *Burberry's* v. *Cording* (1909), 26 R. P. C. 693; *Young* v. *Macrae* (1863), 9 Jur. N. S. 322; *Braham* v. *Bustard* (1863), 1 H. & M. 447. As to descriptive terms generally, see cases cited in note (*p*), p. 21.

(*l*) Thus a surname may be the distinguishing factor: *Horlick's Malted Milk* v. *Summerskill* (1917), 34 R. P. C. 63; or both elements may be distinctive, *e.g.*, *Eno* v. *Dunn* (1890), 7 R. P. C. 311; *Eno's Appn.* (1920), 37 R. P. C. 1; or the name may only be that of an originator: see Index of Cases, under *Anderson, Liebig, Hommel*. As to combinations including geographical names, see p. 24, *post*.

(*m*) Trade Marks Act, 1919, s. 6. See p. 111.

(*n*) *Gramophone Co.'s Appn.* (1910), 27 R. P. C. 689; *Chesebrough Co.'s T. M.* (1902), 19 R. P. C. 342.

(*o*) See *Arbenz' Appn.* (1887), 4 R. P. C. 143; and cf. *Dental Manufacturing Co.* v. *de Trey* (1912), 29 R. P. C. 617.

circumstances in which it is used, superseded. The more appropriate and the commoner the epithet, the greater the difficulty in establishing a secondary meaning (*p*). If other traders have honestly applied the word to articles of the same description during the time in which it is alleged that distinctiveness was being acquired, the difficulties of proving a case in the absence of circumstances pointing to fraud on the part of the defendant will be very great (*q*).

Passing-off one business for another.

Passing-off may take place not only in relation to the supply of goods, but in relation to services of any kind, one business being in effect passed off for another (*r*). This may be effected in many ways, a recent curious example being a case in which initials, which formed part of the plaintiff company's name, though not in themselves distinctive of that company, were described by the defendant company in advertisements as a means of identifying the goods of the defendant company (*s*). In some cases the representation is alleged to be false as suggesting connection with, or succession to, an existing business (*t*). There is, of course, no harm in a person advertising his former association with another trader, as long as this is honestly and truthfully done (*u*); nor will the mere copying of a novel form of advertising constitute a cause of action (*x*).

(*p*) *Reddaway* v. *Banham* (1896), 13 R. P. C. 218; *Cellular Clothing Co.* v. *Maxton* (1899), 16 R. P. C. 397; *Kinnell* v. *Ballantyne* (1910), 27 R. P. C. 185. Cf. *Crosfield's Appn.* (1909), 26 R. P. C. 837, and other cases cited in note (*k*), p. 20. It should, however, be noted that refusal of registration does not mean that a passing off case may not succeed. See *Crosfield* v. *Caton* (1912), 29 R. P. C. 47.

(*q*) *E.g.*, *Sharp* v. *Solomon* (1915), 32 R. P. C. 15.

(*r*) *E.g.*, *Hendriks* v. *Montagu* (1881), 17 Ch. D. 638, and many of the cases cited in succeeding notes. As to cases where the business is not an ordinary trading concern, see p. 25, *post*.

(*s*) *A. G. S. Manufacturing Co.* v. *Aeroplane General Sundries Co.* (1918), 35 R. P. C. 127. Cf. on infringement, *Paine* v. *Daniells* (1893), 10 R. P. C. 217.

(*t*) *E.g.*, *Eastman Photographic Co.* v. *Kodak Cycle Co.* (1898), 15 R. P. C. 105; *Manchester Brewery Co.* v. *North Cheshire and Manchester Brewery Co.*, (1899) A. C. 83; *Walter* v. *Ashton*, (1902) 2 Ch. 282; *Harper* v. *Pearson* (1861), 3 L. T. N. S. 547.

(*u*) *E.g.*, *Foot* v. *Lea* (1850), 13 Ir. Eq. 484; contrast *Hookham* v. *Pottage* (1872), L. R. 8 Ch. 91; *Glenny* v. *Smith* (1865), 13 W. R. 1032. The right to a description of this sort may in some cases devolve with the business: *Rickett* v. *Neville* (1904), 21 R. P. C. 395.

(*x*) *Wertheimer* v. *Stuart, Cooper & Co.* (1906), 23 R. P. C. 481; *Plotzker* v. *Lucas* (1907), 24 R. P. C. 551.

Passing off by similarity of traders' names.

The way in which confusion between businesses is most commonly caused is by the use of similar names. In general, the principles already discussed in relation to the passing-off of goods are applicable (*y*); but the cases relating to surnames and trading names which include a geographical reference require some special consideration, particularly in view of their relevance to questions as to the registrability of such names.

Surnames.

A surname is, within limits, a most effective trade mark, its very purpose being to distinguish, but it is subject to this disadvantage, that for distinguishing between two persons having the same surname it is worse than useless (*z*). When, therefore, a trader claims protection for the goodwill of a business associated with a surname, he is faced with the difficulty that so far as he relies on a surname as the means of guiding customers to his business, that goodwill is, and must always be, subject to the risk that an individual with the same surname may set up business in competition, or, having acquired a reputation, may transfer the benefit of it to a firm or company so that connection with the name properly becomes a part of the goodwill of such firm or company (*a*). But that is the limit of the risk to which his good-

(*y*) Thus artificial names for firms or companies often include a description of the goods sold; the character of the name, the description and locality of the business, and the class of customer are all factors relevant to the probability of deception. *Randall* v. *Bradley* (1907), 24 R. P. C. 773; *British Vacuum Cleaner Co.* v. *New Vacuum Cleaner Co. ibid.* 641; *Ewing* v. *Buttercup Margarine Co.* (1917), 34 R. P. C. 232; *Buttons, Ltd.* v. *Buttons Covered, Ltd.* (1920), 37 R. P. C. 45; *Aerators, Ltd.* v. *Tollit* (1902), 19 R. P. C. 419; *Merchants' Banking Co. of London* v. *Merchants' Joint Stock Bank* (1878), 9 Ch. D. 560. The first and leading word in a name may be of special importance: *Accident Insurance Co.* v. *Accident, Disease and General Insurance Co.* (1884), 54 L. J. Ch. 104; *Facsimile Letter Printing Co.* v. *Facsimile Typewriting Co.* (1912), 29 R. P. C. 557; though the mere addition of words at the beginning will not assist in distinguishing if they only suggest an amalgamation: *North Cheshire and Manchester Brewery Co.* v. *Manchester Brewery Co.*, (1899) A. C. 83. Sect. 8 of the Companies (Consolidation) Act expresses the principles on which the Court acts: *Daimler Motor Co.* v. *London Daimler Motor Co.* (1907), 24 R. P. C. p. 385; though the section does not actually apply to a company already registered: *Ouvah Ceylon Estates, Ltd.* v. *Uva Ceylon Rubber Estates, Ltd.* (1910), 27 R. P. C. p. 756.

(*z*) See *Ainsworth* v. *Walmsley* (1866), L. R. 1 Eq. p. 525; *Cadbury's Appn.* (1915), 32 R. P. C. 9.

(*a*) As to the extent to which association with an individual can or cannot justify the inclusion of his name in an artificial name of a firm or company, see *Tussaud* v. *Tussaud* (1890), 44 Ch. D. 678; *Fine Cotton Spinners' Association* v. *Harwood, Cash & Co., Ltd.* (1907), 24 R. P. C. 533; *Kingston, Miller & Co.*

will is subject: and if the possibility of confusion which is inevitably caused by such competition is increased by anything which such competitor does, either by adding to the name, or omitting distinguishing features, or in the manner of conducting his business, relief will be given (*b*). It is indeed the duty of a competitor coming into the field under the same name as a trader with an established reputation, to take care to avoid confusion (*c*). An expression sometimes used is that "any man has a right to trade honestly under his own name," and there is no doubt that successful actions based on the use of surnames are usually cases in which fraudulent intention is proved. But as the standard of what is not "honest" is determined by the decision of the Court, having regard to the circumstances of the plaintiff's trade and reputation, the above expression, which might be understood as meaning that the action will necessarily fail unless the defendant's conduct is proved to have been dishonest, is not a satisfactory summary of the law (*d*). Apart from its association with a trade or business, there is no exclusive right to a surname (*e*).

v. *Thomas Kingston & Co., Ltd.* (1912), 29 R. P. C. 289; *Waring and Gillow, Ltd.* v. *Gillow and Gillow, Ltd.* (1916), 33 R. P. C. 173; *Baird and Tatlock (London), Ltd.* v. *Baird and Tatlock, Ltd.* (1917), 34 R. P. C. 85; *Dunlop Pneumatic Tyre Co.* v. *Dunlop Motor Co.* (1907), 24 R. P. C. 572; *Chivers* v. *Chivers* (1900), 17 R. P. C. at p. 426; *Allen* v. *Original Samuel Allen & Sons, Ltd.* (1905), 32 R. P. C. 33; and for a case of a right acquired to the name of a predecessor, see *Guimaraens* v. *Fonseca and Vasconcellos, Ltd.* (1921), 38 R. P. C. 388. Of the older cases, the grounds for the decision in *Burgess* v. *Burgess* (1853), 3 De G. M. & G. 896, require critical examination, and *Turton* v. *Turton* (1889), 42 Ch. D. 128, cannot be regarded as an authoritative statement of the law in view of the observations in *Reddaway* v. *Banham* (1896), 13 R. P. C. 218; and *Brinsmead* v. *Brinsmead* (1913), 30 R. P. C. 493.

(*b*) *J. & J. Cash, Ltd.* v. *Cash* (1902), 19 R. P. C. 181; *Goddard* v. *Goddard* (1918), 35 R. P. C. 21; and see Seb. p. 293.

(*c*) The observations on this question in *Jamieson* v. *Jamieson* (1897), 15 R. P. C. 169, must be reviewed in the light of subsequent expressions in *Brooks* v. *Norfolk Cycle Co.* (1899), 16 R. P. C. 523; *Williams* v. *Bronnley* (1909), 26 R. P. C. at p. 773; *Teofani* v. *Teofani* (1913), 30 R. P. C. at p. 457; and the reasoning in *Brinsmead* v. *Brinsmead, supra.* See also *Massam* v. *Thorley* (1880), 14 Ch. D. p. 760, and observations in *Cording's Appn.* (1916), 33 R. P. C. pp. 335, 336.

(*d*) *Valentine* v. *Valentine* (1900), 17 R. P. C. 673; and see *per* Lord Halsbury in *Electromobile Co.* v. *British Electromobile Co.* (1908), 25 R. P. C. p. 154, and cases cited in note (*c*). Where the deceptive results are clear, persistence in the use of a name may be treated as fraudulent: *Shorts, Ltd.* v. *Short* (1914), 31 R. P. C. p. 298; but persistence may be due to a contest as to the facts.

(*e*) *Du Boulay* v. *Du Boulay* (1869), L. R. 2 P. C. 430.

Geographical terms.

Geographical terms, whether as part of a trader's name, or of the name of his goods, or place of business, sometimes afford a means by which passing-off is effected. Substantially the questions raised by such cases are similar to those applicable to surnames and descriptive terms generally. Where a monopoly exists in relation to the products of a particular locality, passing-off may occur even where the name is understood in its primary descriptive sense, because the description *must* indicate the goods of the single producer (*f*). Where this is not the case, it may be necessary to show that a secondary meaning has been acquired, at any rate, in the particular context (*g*). If there is no particular connection between the locality and the class of business in question, proof of this may be comparatively easy (*h*), but where the geographical term is naturally apt to describe the article or class of business the proof will be difficult (*i*), and may be practically impossible (*k*). The address of an established business is not infrequently imitated in order to assist in passing-off (*l*), and where the goodwill of a business is sold with the premises, or premises sold without the goodwill, difficult questions may sometimes arise as to the right to use the name (*m*).

(*f*) See p. 17, *ante*.

(*g*) *Thompson* v. *Montgomery* (1891), 8 R. P. C. 361; *McAndrew* v. *Basset* (1864), 33 L. J. Ch. 561; *Seixo* v. *Provezende* (1865), L. R. 1 Ch. 192. Contrast *Meikle* v. *Williamson* (1909), 26 R. P. C. 775.

(*h*) *E.g.*, *Wotherspoon* v. *Currie* (1872), L. R. 5 H. L. 508; *Worcester Royal Porcelain Co.* v. *Locke* (1902), 19 R. P. C. 479; *Price* v. *Ogston* (1909), 26 R. P. C. 797; contrast *Cooper* v. *Maclachlan* (1902), 19 R. P. C. 27.

(*i*) Compare *Whitstable Oyster Fisheries* v. *Hayling* (1901), 18 R. P. C. 434; *Brock* v. *Pain* (1911), 28 R. P. C. 697; *Grand Hotel of Caledonia* v. *Wilson* (1904), 21 R. P. C. 117; *Apollinaris Co.* v. *Duckworth* (1906), 23 R. P. C. 540; *Spicer* v. *Spalding and Hodge* (1915), 32 R. P. C. 52; and contrast *Hopton Wood Stone Firms, Ltd.* v. *Gething* (1910), 27 R. P. C. 605, with *Dunnachie* v. *Young* (1883), 10 Ct. Sess. Cas. (4th Ser.) 874.

(*k*) *Plotzker* v. *Lucas* (1905), 24 R. P. C. 551; *Australian Land, &c. Co.* v. *Australian and New Zealand Mortgage Co.* (1880), W. N. 6; *Wolff* v. *Nopitsch* (1900), 17 R. P. C. 321; 18 R. P. C. 27.

(*l*) *Pullman* v. *Pullman* (1919), 36 R. P. C. 240; *Hudson* v. *Osborne* (1869), 39 L. J. Ch. 79; and as to the importance of an address, see *Lee* v. *Haley* (1869), L. R. 5 Ch. 155. But an address may be of a descriptive character which has not acquired any secondary meaning. *Charleson* v. *Campbell* (1876), 4 Ct. Sess. Cas. (4th Ser.) 149.

(*m*) See, for example, *Rickerby* v. *Reay* (1903), 20 R. P. C. 381; *Boussod, Valadon & Co.* v. *Marchant* (1908), 25 R. P. C. 42; *Nicholson* v. *Buchanan* (1902), 19 R. P. C. 321; *Motley* v. *Downham* (1837), 3 My. & Cr. 1; *Mason* v. *Queen* (1886), 23 Sc. L. R. 641; *Townsend* v. *Jarman* (1900), 17 R. P. C. 649.

Probability of damage must be shown.

In all cases of alleged passing-off, mere inconvenience, not resulting in damage due to deception, is not a ground for granting an injunction, but as between two traders, confusion will generally result in damage, and this result will be readily assumed (*n*); and a society, though not an ordinary trading concern, may have a pecuniary interest in maintaining the distinctive character of a title which indicates its members (*o*).

Literary productions.

A number of cases have arisen in relation to the passing-off of literary or musical works, magazines, or periodicals. Originally, as in the earlier trade mark cases, the decisions turned upon the question of fraudulent intention (*p*), but it is now well settled that although there is no copyright in the title to a work, the ordinary principles of passing-off cases are applicable, and if there is a serious risk of deception and damage, an injunction will be granted (*q*). In order that rights may be acquired in respect of the title to a work, there must have been actual use of the title. Mere advertisement will not in general be sufficient, though it may perhaps be doubted whether at the present time advertisement might not be made upon a sufficient scale to enable a plaintiff to prove both deception and damage, and establish a claim to relief (*r*). Each case will depend upon the particular facts, but it must be borne in mind in connection with literary works that the persons likely to be affected are *ex hypothesi* persons of some degree of intelligence, though perhaps, in the case of certain classes

(*n*) Contrast *Day* v. *Brownrigg* (1878), 10 Ch. D. 294, and *Street* v. *Union Bank of Spain* (1885), 30 Ch. D. 156, with *Ouvah Ceylon Estates, Ltd.* v. *Uva Ceylon Rubber Estates, Ltd.* (1910), 27 R. P. C. p. 648 (affirmed on appeal), and *Ewing* v. *Buttercup Margarine Co., Ltd.* (1917), 34 R. P. C. p. 237.

(*o*) *Society of Accountants and Auditors* v. *Goodway* (1907), 24 R. P. C. 159; *Society of Accountants in Edinburgh* v. *Corporation of Accountants, Ltd.* (1893), 20 Ct. Sess. Cas. (4th Ser.) 750. Cf. *Toms and Moore* v. *Imperial Merchant Service Guild, Ltd.* (1908), 25 R. P. C. 474; but contrast *Society of Architects* v. *Kendrick*, (1910) W. N. 113.

(*p*) *Hogg* v. *Kirby* (1803), 8 Vesey, 215; *Spottiswoode* v. *Clarke* (1846), 2 Ph. 154, and other cases cited in Seb. pp. 325, 326.

(*q*) *Kelly* v. *Hutton* (1868), L. R. 3 Ch. 703; *Clements* v. *Maddick* (1859), 1 Giff. 98; *Walter* v. *Emmott* (1885), 54 L. J. Ch. 1059, where it will be observed that the question whether the term "property" is rightly used in this connection again appears: see pp. 4, 5, *ante*. For a long list of examples of such cases, see Seb. pp. 328 *et seq.*

(*r*) See *Maxwell* v. *Hogg* (1867), L. R. 2 Ch. 307; *Licensed Victuallers' Newspaper Co.* v. *Bingham* (1888), 38 Ch. D. 139; but see *Primrose Press Agency* v. *Knowles* (1886), L. J. Notes of Cases, p. 43.

of literature, the intelligence to which they appeal may not reach a very high standard. The probability of deception is not, therefore, the same as with some other classes of goods (*s*), and there may be no likelihood of deception or damage unless the two publications will compete against each other (*t*).

Injunctions will similarly be granted to restrain the publication of a book which is not the work of a particular author in such a manner as to suggest that it is (*u*); but an attempt to prove that an older musical work of an authoress was being passed off as a recent work was unsuccessful where no distinct and recognised difference between the alleged classes was proved (*x*).

The name of a play or film production can be protected in the same way as the title of a book or periodical (*y*).

Probability of deception.

The examination of passing-off cases in the preceding pages has been made principally with a view to illustrating the circumstances in which names and words can, or cannot, be considered as distinctive of particular traders. It has been pointed out that the relevance of such cases on the single question as to whether a mark is distinctive or not is limited by the consideration that in passing-off cases this question may not have to be answered by itself (*z*). It is equally necessary to emphasise the fact that the issue as to deceptive resemblance between two marks, which arises in an action for infringement, or on a question of objection to registration under sect. 19, is more limited than the issue in a passing-off case where the defendant's conduct as a whole must be considered. On the other hand, in considering an opposition to registration based on sect. 11, all the circumstances attending the use which the applicant has made or is likely to make of the proposed mark can be considered, so that registration may be refused, although proof of the probability of deception is less than would justify the granting of an injunction in an action for infringement or passing-off (*a*). Subject to these qualifications,

(*s*) *Borthwick* v. *Evening Post* (1888), 37 Ch. D. p. 461.

(*t*) *Ibid.*, and *Outram* v. *London Evening Newspaper Co.* (1911), 28 R. P. C. 308; *Ridgway* v. *Amalgamated Press, Ltd.* (1912), 29 R. P. C. 130; *Stevens* v. *Cassell* (1913), 30 R. P. C. 199.

(*u*) *Byron* v. *Johnson* (1816), 2 Mer. 29; *Archbold* v. *Sweet* (1832), 1 M. & R. 162. See, however, *Lee* v. *Gibbings* (1892), 67 L. T. 263.

(*x*) *Harris* v. *Warren* (1918), 35 R. P. C. 217.

(*y*) *Raleigh* v. *Kinematograph Trading Co.* (1914), 31 R. P. C. 143.

(*z*) P. 14, *ante*.

(*a*) *Wheatley, Akeroyd & Co.'s Appn.* (1920), 37 R. P. C. 137; and see p. 60.

the general principles which guide the Courts in passing-off cases are applicable to questions of deceptive resemblance arising in relation to the statutory provisions.

Class of persons and transactions to be considered.

One of the most important of these principles is that in considering the probability of deception, weight must be given to the characteristics of the persons liable to be deceived, and the nature of the transaction in respect of which deception may occur. Thus the persons to be considered are those who are likely to be influenced by the representation in question, that is, the probable customers, including ultimate as well as immediate purchasers (*b*), who are likely to rely on the mark (*c*). Further, amongst such, it is neither the unusually acute or well informed, nor the inordinately stupid, who are particularly to be considered, but those of the intelligence ordinarily found amongst customers of the class in question, who exercise that degree of caution or lack of caution which is usual in dealings of the character to which the particular action relates (*d*). Where special markets are concerned, the characteristics of purchasers in such markets must be considered (*e*).

Locality of reputation.

In cases of passing-off by mark or get-up it is necessary to show that the plaintiff's mark or get-up is understood to be distinctive in the area in which the defendant trades. It is not necessary that everybody in that area should so understand it, but actual trade in the district must be established, and where proof of distinctiveness

(*b*) *Sykes* v. *Sykes* (1833), 3 B. & C. 541; *Lever* v. *Goodwin* (1887), 4 R. P. C. 492.

(*c*) *Schwerdtfeger* v. *Hart Publishing Co.* (1912), 29 R. P. C. 236, p. 243.

(*d*) *Ford* v. *Foster* (1872), L. R. 7 Ch. 611 (*Eureka* used with one meaning in the trade and another to the public; contrast *Gramophone Co.'s Appn.* (1910), 27 R. P. C. 689); *Payton* v. *Snelling* (1890), 17 R. P. C. p. 57 (coffee tins); *Edge* v. *Niccolls* (1911), 28 R. P. C. 582 (1*d.* packets of blue); *Montgomery* v. *Thompson* (1891), 8 R. P. C. 361 (thirsty folk want beer, not explanations); *Borthwick* v. *Evening Post* (1888), 37 Ch. D. p. 461 (newspapers); *Armstrong Oiler Co.* v. *Patent Axle-box Co.* (1910), 27 R. P. C. p. 376, and *Universal Winding Co.* v. *Hattersley* (1915), 32 R. P. C. p. 490 (machinery); *Aquascutum* v. *Cohen and Wilks* (1909), 26 R. P. C. p. 653 (waterproofs); *Buttons, Ltd.* v. *Buttons Covered, Ltd.* (1920), 37 R. P. C. 45; *Waring and Gillow, Ltd.* v. *Gillow and Gillow, Ltd.* (1916), 33 R. P. C. p. 188 (business transactions). See also notes to sects. 11 and 19.

(*e*) *Johnston* v. *Orr-Ewing* (1882), 7 A. C. 219. On a claim appropriately framed, leave will be given to take evidence abroad: *Rose* v. *Riddle* (1914), 31 R. P. C. 48; contrast *White* v. *United Confectionery Co., ibid.* 286. Cf. *Ogston and Tennant's Appn.* (1909), 26 R. P. C. 816. The idiosyncrasies of foreign customers must not be exaggerated: *Cowie* v. *Herbert* (1897), 14 R. P. C. 436. As to cases on registration, see p. 61.

involves establishing the fact that a secondary meaning has been acquired in respect of a name or common word, a stricter standard will be set (*f*), but sporadic and intermittent user of the name or word by persons other than the plaintiff will not necessarily prevent such name or word from becoming distinctive (*g*).

Degree of resemblances.

In considering whether the resemblance between two contrasted marks is such that one is an infringement of the other, or is calculated to lead to passing-off, every case raises a question which can only be decided on its own particular facts; other cases on other facts are only useful as showing the considerations which weigh with the Court (*h*). Some of these considerations may be noted. Thus, the ear, the eye, and the understanding may each contribute to the final result; consequently similarity in the appearance of words may justify an injunction, although the difference between them is more marked where they are vocalised (*i*). On the other hand, the sound of a word as pronounced by the class of customer in question is a material consideration (*k*), and where the word conveys an intelligible idea, that idea may be a relevant factor. If the same idea is suggested by both marks, deception may be probable though the words differ in appearance, whereas a difference in meaning, though the lettering is similar, may result in making the marks readily distinguishable (*l*). So where a mark, label, or get-up has resulted in a word becoming distinctive of the goods of a particular trader, though the word is not itself used

(*f*) *Faulder* v. *Rushton* (1903), 20 R. P. C. 477; *Thorne* v. *Sandow* (1912), 29 R. P. C. 440. Some of the observations in *Chivers* v. *Chivers* (1900), 17 R. P. C. 420, must be considered in the light of subsequent name cases: see p. 22, *ante;* and *Shorts, Ltd.* v. *Short* (1914), 31 R. P. C. at p. 298. Cf. *Wurm* v. *Webster* (1904), 21 R. P. C. 373.

(*g*) *Goddard* v. *Goddard* (1918), 35 R. P. C. 21.

(*h*) *Seixo* v. *Provezende* (1866), L. R. 1 Ch. p. 196; *Edwards* v. *Dennis* (1885), 30 Ch. D. p. 471. For an exhaustive discussion of the subject, and examples of contrasted words and devices, reference should be made to Sebastian or Kerly on Trade Marks.

(*i*) *Oxo, Ltd.* v. *King* (1917), 34 R. P. C. 165. Cf. *Schicht's Appn.* (1912), 29 R. P. C. 483; *Egg Products, Ltd.'s Appn.* (1922), 39 R. P. C. 155.

(*k*) *E.g.*, on an application to register, *Wheatley, Akeroyd's Appn.* (1920), 37 R. P. C. 137.

(*l*) *Fitchetts* v. *Loubet* (1919), 36 R. P. C. 296; *McCaw* v. *Nickols* (1904), 21 R. P. C. 15; *St. Mungo Manufacturing Co.* v. *Viper Co.* (1910), 27 R. P. C. 420. Cf. *Fox & Co.'s Appn.* (1920), 37 R. P. C. 37; *Smith's Appn.* (1913), 30 R. P. C. 363. As to infringement of ordinary English words, see *Imperial Tobacco Co.* v. *de Pasquali* (1918), 35 R. P. C. p. 195.

on the goods, the use of that word by another may lead to confusion, and, conversely, where a word is used as a trade mark by one trader, the use by another of a device suggesting that word may be restrained, or registration may be refused under sect. 11 (*m*).

Generally speaking, in cases either of passing-off or of infringement, a comparison of elements which are common to the trade, or otherwise of a non-distinctive character, is of little assistance (*n*), and similar considerations apply in relation to comparisons of parts of words or devices on applications to register (*o*). Such comparisons must, however, be made by considering the marks as a whole, and, particularly where the question of fraudulent intention is in issue, the fact that certain elements are common to the trade will not prevent their playing a part in producing a deceptive whole (*p*). On the other hand, the fact that there has been no attempt to copy the general get-up may be material as negativing any fraud (*q*). If a mark consists of a special arrangement of words, the mere use of those words will not generally be an infringement, or lead to passing-off, unless they are in themselves distinctive (*r*); but if the trade mark is substantially a word mark, the mere omission of some conventional border or ornamentation will not be a sufficient distinction to avoid infringement (*s*).

How the test should be applied.

The proper test in making the comparison is not to look at the two marks side by side, when differences may become apparent,

(*m*) *E.g.*, *Briggs* v. *Dunn* (1911), 28 R. P. C. 705; *Johnston* v. *Orr-Ewing* (1882), 7 A. C. 219; *Anglo-Swiss Condensed Milk Co.* v. *Metcalf*, 3 R. P. C. 28. Cf. *Dewhurst's Appn.* (1896), 13 R. P. C. 288; *Société des Verreries' T. M* (1894), 11 R. P. C. 142; *Pomril's Appn.* (1901), 18 R. P. C. 181. As an example of this principle and its limits, see *Boord* v. *Thom and Cameron* (1907), 24 R. P. C. 697; *Boord* v. *Huddart* (1904), 21 R. P. C. 149; *Société Dubonnet's Appn.* (1915), 32 R. P. C. 241; *Bagots Hatton's Appn.* (1916), 33 R. P. C. 357.

(*n*) *E.g.*, *Payton* v. *Snelling* (1900), 17 R. P. C. 48, 628; *Williams* v. *Bronnley* (1909), 26 R. P. C. 765; *Coleman* v. *Stephen Smith, Ltd.* (1912), 29 R. P. C. 81; *Tatem* v. *Gaumont* (1917), 34 R. P. C. 181; *Hennessy* v. *Keating* (1908), 25 R. P. C. 361.

(*o*) *Texas Co.'s Appn.* (1914), 31 R. P. C. 53; *Fox & Co.'s Appn.* (1920), 37 R. P. C. 37; *Pianotist Co.'s Appn.* (1906), 23 R. P. C. 774.

(*p*) *Christiansen's T. M.* (1886), 3 R. P. C. 54; *Farrow's T. M.* (1890), 7 R. P. C. 260; *Du Cros* v. *Gold* (1913), 30 R. P. C. 117.

(*q*) *California Fig Syrup Co.* v. *Taylor's Drug Stores* (1897), 14 R. P. C. at p. 569; *Fitchetts* v. *Loubet* (1919), 36 R. P. C. 296.

(*r*) *Rugby Portland Cement Co.* v. *Rugby and Newbold Portland Cement Co.* (1892), 9 R. P. C. 46.

(*s*) *Woodward* v. *Boulton Macro, Ltd.* (1915), 32 R. P. C. p. 196.

but to consider the effect which will be produced by the defendant's mark on a purchaser who has the plaintiff's mark in his mind, but not actually before him (*t*). Colour may be a very material consideration (*u*).

Effect of features distinguishing the goods.

As has already been pointed out, where the issue is only that of infringement of the statutory right conferred by registration, the question is whether the defendant has used the plaintiff's mark, or a mark so closely resembling it as to be calculated to deceive (*x*). If he has done this it is no defence to prove that he has in practice added other matter which would prevent the likelihood of passing off (*y*), and even where the name forms part of a label registered as a trade mark, the substitution of the defendant's name for the plaintiff's may not be a sufficient distinction (*z*).

Where, however, the issue is passing-off, the question is the single question as to whether, taking all the circumstances into account, deception is probable, and added matter may prevent the probability of deception which would otherwise result from similarity in certain features (*a*). But the mere addition of the defendant's name, though a matter to be considered, is often quite insufficient as a distinction (*b*), and in any case reliance cannot be placed on such distinguishing features unless they will remain on the goods when they reach the public (*c*). The affixing of a dealer's adhesive label upon bottles having a manufacturer's trade mark moulded upon them will not in general justify the filling of such bottles with anything other than the product of the owner of

(*t*) *Seixo* v. *Provezende* (1866), L. R. 1 Ch. p. 196.

(*u*) Colouring may affect the impression created by the design by giving prominence to or obscuring features; *e.g.*, *Biegel's T. M.* (1887), 4 R. P. C. 525; 57 L. T. 247. As to statutory provisions with regard to colour, see p. 59 and notes.

(*x*) *Tatem* v. *Gaumont* (1917), 34 R. P. C. 181.

(*y*) Thus in *Brighten* v. *Cavendish* (1915), 32 R. P. C. 230, it appeared that so far as the get up was concerned passing-off was not probable.

(*z*) *E.g.*, *Boord* v. *Thom* (1907), 24 R. P. C. 697.

(*a*) *E.g.*, *Payton* v. *Snelling* (1900), 17 R. P. C. 628; *Schweppes* v. *Gibbens* (1905), 22 R. P. C. 601; *Star Cycle Co.* v. *Frankenburgs* (1907), 24 R. P. C. 405; *Alaska Packers* v. *Crooks* (1901), 18 R. P. C. 129.

(*b*) *E.g.*, *Kinahan* v. *Bolton* (1863), 15 Ir. Ch. 75; *Wotherspoon* v. *Currie* (1872), L. R. 5 H. L. 508; *Johnston* v. *Orr-Ewing* (1882), 7 A. C. p. 230; *Daniel* v. *Whitehouse* (1899), 16 R. P. C. 71. Cf. *Price* v. *Jeyes* (1902), 19 R. P. C. 22, *per* Vaughan Williams, L. J. See also p. 16, *ante*.

(*c*) *Elliott* v. *Hodgson* (1902), 19 R. P. C. 518; and cf. *Cochrane* v. *McNish* (1896), 13 R. P. C. 100; *Barlow* v. *Johnson* (1890), 7 R. P. C. 395.

the trade mark (*d*), but if there is no likelihood of deception it would seem that the ordinary action for passing-off cannot be maintained in such cases (*e*).

Except in cases of infringement in which the resemblance between the two marks is obvious to the eye, it is usual to call witnesses familiar with the trade in question. Such witnesses may state the effect produced by the mark in question upon their own mind (*f*), and may give valuable evidence as to the practice in the trade, the habits of customers, the circumstances under which transactions are carried on; but statements as to the witnesses' opinion on the question whether the public would or would not be likely to be deceived are not admissible in evidence (*g*). Evidence of the last-mentioned character is frequently included in statutory declarations on oppositions to applications to register, and is frequently read without objection, but evidence obtained in such a way, or in answer to leading questions, does not carry much weight (*h*). Evidence.

Fraudulent intention does not necessarily prove that the result will be deceptive, though the deduction will readily be made that a scheme planned to deceive will succeed in its object (*i*).

Evidence of great value may often be obtained by what are known as "trap orders," that is, orders given for the plaintiff's goods to persons suspected of supplying, or likely to supply, the defendant's goods in substitution for them. Where such substitution is effected by the defendant or his servants, cogent evidence is afforded either of systematic fraud, or of a deceptive Trap orders.

(*d*) See Merchandise Marks Act, 1887, ss. 2, 3, 5; *Wood* v. *Burgess* (1889), 24 Q. B. D. 162; *Thwaites* v. *McEvilly* (1904), 21 R. P. C. 397; *Barr* v. *Mair*, *ibid.* 665; *Stone* v. *Burn* (1910), 103 L. T. 540.

(*e*) *Welsh* v. *Knott* (1857), 4 K. & J. 747; *Barrett* v. *Gomm* (1883), 74 L. T. Jo. 388; *Woolley* v. *Morrison* (1904), 21 R. P. C. 63, 349; *Donohoe* v. *Cherry* (1909), 26 R. P. C. 545. Contrast *Rose* v. *Loftus* (1878), 47 L. J. Ch. 576.

(*f*) *Ash* v. *Invicta Co.* (1912), 29 R. P. C. 465; *Bourne* v. *Swan and Edgar* (1903), 20 R. P. C. 105.

(*g*) *Royal Warrant Holders' Assn.* v. *Dean* (1911), 28 R. P. C. 721, reviewing earlier authorities and following *North Cheshire and Manchester Brewery Co.* v. *Manchester Brewery Co.*, (1899) A. C. 83; *Payton* v. *Snelling* (1900), 17 R. P. C. p. 635. As an example of admissible expert evidence, see *Iron-Ox Remedy Co.* v. *Co-op. Wholesale Soc.* (1907), 24 R. P. C. 425.

(*h*) See observations in *Smith's Appn.* (1913), 30 R. P. C. p. 366; *Brinsmead* v. *Brinsmead*, *ibid.* p. 513; *Fox & Co.'s Appn.* (1920), 37 R. P. C. 37.

(*i*) *Ash* v. *Invicta Co.* (1912), 29 R. P. C. p. 475; *Perry* v. *Hessin*, *ibid.* p. 528; *Iron-Ox Remedy Co.* v. *Co-op. Wholesale Soc.*, *supra*.

resemblance resulting in the person who served the goods being himself misled (*k*). Where the substitution is effected by a retailer, the circumstance is open to the comment that the case may only prove an attempt at fraud by a third party, and does not afford any certain indication that such frauds could be successfully carried out, but this objection will have little force if the same result is obtained from several retail shops. The Courts, however, will always bear in mind the fact that when trap orders are given they are intended to be successful, and will carefully scrutinise the evidence to make sure that the order was fairly given (*l*), and will hesitate to accept such evidence if there is no corroboration, and attach little weight to a single case, which may well have been accidental (*m*). Written orders are, therefore, much more valuable than verbal orders, and it has been thought to be desirable that the circumstances should be brought to the notice of the defendant soon after the event, so that investigation is still possible. Cases relied upon should, therefore, be brought forward at once if a motion is made for interlocutory relief, and should in any case be pleaded (*n*).

Defences.

It has already been pointed out that in a passing-off case there is normally only one issue, viz.: whether the plaintiff has proved his allegation that the defendant's conduct is such that goods which are not the plaintiff's are likely to be taken as and for the plaintiff's (*o*). The usual defence will, therefore, be a traverse of this allegation. Where, however, the plaintiff's case involves two steps, viz.: firstly, that a particular mark, name, or feature is distinctive of his goods, and secondly, that the defendant's imitation is so near as to be calculated to deceive, the defence may take the form of a denial of either or both of these allegations. So, in an action upon a registered trade mark, it is open to the defendant either to challenge the validity of the registration by a

(*k*) See, for example, *Havana Cigars Co.* v. *Tiffin* (1909), 26 R. P. C. 473; *O. T., Ltd.* v. *Cummings* (1915), 32 R. P. C. 69; *Bovril* v. *Bodega* (1916), 33 R. P. C. 153.

(*l*) See, for example, *Carr* v. *Crisp* (1902), 19 R. P. C. 497; *Peters* v. *Domestic Inventions, Ltd.* (1908), 25 R. P. C. 387; *Coombe* v. *Mendit* (1913), 30 R. P. C. p. 719.

(*m*) See, for example, *Donohoe* v. *Cherry* (1909), 26 R. P. C. 545; *Rutter* v. *Smith* (1901), 18 R. P. C. 49; *Lever* v. *Masbro, &c. Society* (1912), 29 R. P. C. 33, 225; *Leahy* v. *Glover* (1893), 10 R. P. C. 141.

(*n*) *Ripley* v. *Griffiths* (1902), 19 R. P. C. 590.

(*o*) See p. 14, *ante*.

motion to rectify the register upon any of the grounds available (*p*), and also to deny infringement. The latter defence may be based on the ground either that there is no deceptive resemblance between the marks (*q*), or that the registration does not cover the goods in question (*r*), or on the defendant's right to use the mark in spite of the plaintiff's registration (*s*). In addition to such defences it may sometimes be possible for the defendant to prove that the plaintiff is disentitled to any of the relief claimed, or to some part of it, on some special ground such as fraud or acquiescence.

Fraudulent trade or misrepresentation by the plaintiff.

A defence based on the allegation that the plaintiff's own trade is fraudulent is founded on the principle that the plaintiff must come into Court with clean hands (*t*). Under the old practice this principle was in many cases made a ground for refusing equitable relief until the plaintiff had brought an action in the Common Law Courts (*u*). That procedure is obsolete, and the legal and equitable rights of the plaintiff have to be determined in the same proceeding (*x*). Doubts have been expressed as to whether such a defence is available where the action is an action for damages, such as could have been brought in the Common Law Courts based upon fraud (*y*), and in regard to a registered mark the terms of sect. 39 must be considered. It has, however, been treated as sufficient in a number of actions (*z*). But it is now clear that to afford an answer to the plaintiff's claim it is necessary to

(*p*) See sects. 35 and 41, and notes thereto.

(*q*) See pp. 26 *et seq.*

(*r*) See sect. 8.

(*s*) See sect. 39, which is subject to the proviso to sect. 41 as to marks continuously used from a date anterior to the first user or registration of the plaintiff's mark, and also to the provisions of sect. 44 and any conditions or limitations upon the register.

(*t*) *Leather Cloth Co.* v. *American Leather Cloth Co.* (1863), 4 De G. J. & S. 137; 11 H. L. C. 523.

(*u*) *E.g.*, *Pidding* v. *How* (1837), 8 Sim. 477; *Perry* v. *Truefitt* (1842), 6 Beav. 66; *Flavel* v. *Harrison* (1853), 10 Hare, 467.

(*x*) *Ford* v. *Foster* (1872), L. R. 7 Ch. 611.

(*y*) *Jamieson* v. *Jamieson* (1908), 15 R. P. C. p. 191; *Wolff* v. *Nopitsch* (1901), 18 R. P. C. p. 32.

(*z*) *E.g.*, *Newman* v. *Pinto* (1887), 4 R. P. C. 508; *Morgan* v. *McAdam* (1867), 36 L. J. Ch. 228; *Leather Cloth Co.* v. *Lorsont* (1869), L. R. 9 Eq. p. 252; and see *Bile Bean Co.* v. *Davidson* (1905), 22 R. P. C. 553; 23 R. P. C. 725; *Cropper* v. *Cropper* (1906), 23 R. P. C. at p. 394. Misrepresentations as to the identity of the manufacturer may prevent the acquisition of any right to a trade mark: *Wood* v. *Lambert* (1886), 3 R. P. C. 81; *Thorneloe* v. *Hill* (1894), 11 R. P. C. 61.

prove a misrepresentation which is not merely collateral, but one which, though it may not form part of the actual trade mark, is a part of, or associated with, the style under which the goods are offered to the public (*a*). A misrepresentation may be disregarded if it is both trivial and unlikely to deceive (*b*), or has been abandoned for some time before the action is brought (*c*). Where the defendant succeeds in establishing such a defence, but his own trade is tainted with fraud, the action is commonly dismissed without costs (*d*).

The presence in a mark of matter which would render it disentitled to protection in a Court of Justice is a bar to registration, and if registration has been obtained, a ground for rectification of the register (*e*).

Failure to comply with some independent statutory requirement is not of itself sufficient to bar the plaintiff's right to relief (*f*).

Improper use of the word "patent."

An example of misrepresentation, which has in many cases been relied upon as a defence, is the use of words suggesting untruly that the goods are protected by a patent. In particular cases the word "patent" may not convey any such suggestion, as when it has become generally recognised as a part of the description of the goods (*g*), or the reference is such as to show that the patent has expired (*h*), and in some cases the use of such words may not affect the plaintiff's right to relief on the ground above mentioned, that such misrepresentation is merely collateral (*i*). Subject to these considerations, the rule in regard to misrepresentations will be applied whether there has never been a patent, or whether there has been a patent which has been declared invalid

(*a*) Contrast *Ford* v. *Foster*, *supra*, with *Bile Bean Co.* v. *Davidson*, *supra*.

(*b*) *Siegert* v. *Findlater* (1878), 7 Ch. D. 801; and cf. *Cochrane* v. *McNish* (1896), 13 R. P. C. 100. The *mere* unlikelihood of deception will not exonerate the plaintiff: *Leather Cloth Co.* v. *American Leather Cloth Co.*, 4 De G. J. & S. at p. 148.

(*c*) *Benedictus* v. *Sullivan* (1895), 12 R. P. C. 25, 32. Cf. *Wills' T. M.* (No. 2) (1893), 10 R. P. C. 269.

(*d*) *E.g.*, *Newman* v. *Pinto*, *supra*.

(*e*) See notes to sects. 11, 35 and 41.

(*f*) *Randall* v. *British-American Shoe Co.* (1902), 19 R. P. C. 393; *Pearks* v. *Talmey* (1901), 18 R. P. C. 185. Cf. *Albert Baker & Co.'s Appn.* (1908), 25 R. P. C. p. 513.

(*g*) *Marshall* v. *Ross* (1869), L. R. 8 Eq. 651; and cf. *Cochrane* v. *McNish*, *supra*.

(*h*) See *Cheavin* v. *Walker* (1877), 5 Ch. D. 850.

(*i*) *Ford* v. *Foster* (1872), L. R. 7 Ch. 611; and cf. *Perry* v. *Hessin* (1912), 29 R. P. C. at p. 128.

or has expired (*k*). Trade marks containing words such as "patent," "registered," &c., will not usually be accepted for registration (*l*).

Untrue claim to registration.

On the same principle, a misrepresentation as to a trade mark being registered, which is not so, or a misrepresentation as to what it is that is registered, may similarly affect the plaintiff's right to relief. But a claim to registration before the mark is in fact registered, if registration is subsequently obtained, may be no bar to the plaintiff's right (*m*). Where a general claim is made to registration of a label in which the word "trade mark" is so placed as to appear to refer only to one particular feature of the label, the question may arise as to whether there is likely to be confusion as to what is, and what is not, registered (*n*); but apart from such cases, the mere use of the word "trade mark" will not be held to imply registration (*o*). A false claim to registration is also punishable as an offence (*p*).

Misrepresentations by plaintiff must be pleaded.

In all cases where misrepresentation by the plaintiff is relied upon by way of defence, it must be pleaded (*q*).

Delay or acquiescence.

Mere delay by the plaintiff, though it may affect his claim for interlocutory relief (*r*) or damages (*s*), will not deprive him of the right to an injunction if he could still obtain at least nominal damages at law (*t*). Such delay may be excused for a variety of

(*k*) *Cheavin* v. *Walker, supra;* cf. *Hubbuck* v. *Brown* (1900), 17 R. P. C. p. 647; *Boake Roberts* v. *Wayland* (1909), 26 R. P. C. p. 257.

(*l*) See Rule 11. As to offences in connection with misleading use of the words "patent," &c., see Patents and Designs Act, 1907, s. 89, and Merchandise Marks Act, 1887, s. 3 (1).

(*m*) *Read* v. *Richardson* (1881), 45 L. T. N. S. 54. Cf. on an application to register, *Altman's Appn.* (1904), 21 R. P. C. 753.

(*n*) See *Apollinaris Co.'s T. M.* (1891), 8 R. P. C. 137; *Wills' T. M.* (No. 2) (1893), 10 R. P. C. 269; but see *Bass' T. M.* (1902), 19 R. P. C. 529; *Hammond* v. *Brunker* (1892), 9 R. P. C. 301.

(*o*) *Sen Sen Co.* v. *Britten* (1899), 16 R. P. C. 137; and see *Hubbuck* v. *Brown* (1900), 17 R. P. C. 148, p. 156.

(*p*) See sect. 67 and notes.

(*q*) *Lever* v. *Goodwin* (1887), W. N. 107; *Boake Roberts* v. *Wayland* (1909), 26 R. P. C. 251.

(*r*) See p. 38.

(*s*) See p. 40.

(*t*) *Fullwood* v. *Fullwood* (1878), 9 Ch. D. 176; and see cases cited below. In *Ripley* v. *Bandey* (1897), 14 R. P. C. 591, 944, an injunction was refused; the case was compromised on appeal, and its authority has been doubted: *Reddaway* v. *Stevenson* (1903), 20 R. P. C. p. 282. Delay may be a reason for staying the operation of the injunction: *Grant* v. *Levitt* (1901), 18 R. P. C. 361.

reasons, such as the need to collect evidence (*u*), or the trifling character of the infringement (*x*), and ignorance of the infringement is a sufficient answer (*y*).

Delay, however, may be evidence of actual acquiescence, amounting in effect to a licence which will deprive the paintiff of his right (*z*), and in some circumstances may result in the mark becoming *publici juris* (*a*), and conduct which might once have led to the probability of deception may cease to be likely to produce that effect if it has been long continued (*b*). But in the latter case, the Court will be disposed to disregard user which was fraudulent in its inception (*c*).

Inoperative defences.

Many defences have been set up from time to time which are inoperative. A few of these may be mentioned (*d*): *e.g.*, ignorance of the plaintiff's rights (*e*); absence of proof of actual deception or fraudulent intention (*f*); that immediate purchasers will not be deceived (*g*); that the mark is descriptive or indicates quality as well as trade origin (*h*); that the entire mark has not been copied (*i*); that the name complained of is the defendant's own name, if he has used it so as to deceive (*k*); that the goods are in fact of the plaintiff's manufacture, if they are of a different quality from that which the mark is known to indicate (*l*); that the goods

(*u*) *Lee* v. *Haley* (1869), L. R. 5 Ch. 155.

(*x*) *Goddard* v. *Goddard* (1918), 35 R. P. C. 21; *Rowland* v. *Michell* (1897), 14 R. P. C. 37.

(*y*) *Apollinaris Co.* v. *Herrfeldt* (1887), 4 R. P. C. 478; *Barlow* v. *Johnson* (1890), 7 R. P. C. 395, 419.

(*z*) As to effect of a licence, see p. 9.

(*a*) *National Starch Co.* v. *Munn's, &c. Co.* (1894), 11 R. P. C. 281; *Woodward* v. *Boulton Macro, Ltd.* (1915), 32 R. P. C. 173 (so far as the action for passing off was concerned; as to the effect of registration and sect. 41, see pp. 10, 85); *Gledhill* v. *British Perforated Toilet Paper Co.* (1911), 28 R. P. C. 429, 714.

(*b*) *E.g.*, *Londonderry* v. *Russell* (1887), 3 T. L. R. 360.

(*c*) *Rodgers* v. *Rodgers* (1874), 31 L. T. N. S. 285. But see *National Starch Co.* v. *Munn's, &c. Co.*, *supra*.

(*d*) For a fuller list, see Seb. pp. 239 *et seq.*

(*e*) *Edelsten* v. *Edelsten* (1863), 1 De G. J. & S. 185; as to damages, see p. 39.

(*f*) *Ibid.*; and see p. 4, *ante*.

(*g*) *Sykes* v. *Sykes* (1824), 3 B. & C. 541.

(*h*) *Ransome* v. *Graham* (1882), 51 L. J. Ch. 897; and see p. 18.

(*i*) *Ford* v. *Foster* (1872), L. R. 7 Ch. 611.

(*k*) See p. 23.

(*l*) See p. 15.

are of equal quality to the plaintiff's (*m*), or better (*n*); that the defendant has used his own name as well (*o*); that the mark has been used by others, unless it is proved to be common to the trade (*p*); that the plaintiff uses more than one trade mark on the same goods (*q*); that the plaintiff in fact uses his trade mark with devices not registered as part of it, *e.g.*, by filling in blank spaces (*r*); that the acts complained of were only the acts of a servant or agent (*s*); that the defendants acted only as commission agents (*t*).

Plaintiff's right to relief.

The fact of infringement of a trade mark validly registered, or of conduct likely to lead to passing-off, coupled with a reasonable apprehension of repetition of the acts complained of, is sufficient, in the absence of other circumstances disentitling the plaintiff to relief (*u*), to justify a trader in seeking relief from the Court. Since the very life of a trade mark may depend on the prompt suppression and exposure of infringements (*x*), proof that deceptive conduct is threatened is sufficient (*y*), and it is unnecessary to complain before action (*z*), although in exceptional cases, particularly where retailers only are attacked (*a*), a plaintiff who does not make

(*m*) *Blofeld* v. *Payne* (1833), 4 B. & Ad. 410.

(*n*) *Spicer* v. *Spalding and Hodge* (1915), 32 R. P. C. 52.

(*o*) See p. 30.

(*p*) *Dent* v. *Turpin* (1861), 2 J. & H. 139; *Worcester Porcelain Co.* v. *Locke* (1902), 19 R. P. C. 479; *Dunnachie* v. *Young* (1883), 10 Ct. Sess. Cas. (4th Ser.) 874; *Paine* v. *Daniells* (1893), 10 R. P. C. 217.

(*q*) *Braham* v. *Bustard* (1863), 1 H. & M. 447; and see *Andrew* v. *Kuehnrich* (1913), 30 R. P. C. 677.

(*r*) *Melachrino* v. *Melachrino* (1887), 4 R. P. C. 215; *Hammond* v. *Malcolm Brunker & Co.* (1890), 9 R. P. C. 301.

(*s*) *Bovril* v. *Bodega* (1916), 33 R. P. C. 153; *Grierson* v. *Birmingham Hotel Co.* (1901), 18 R. P. C. 158; *Havana Cigar Co.* v. *Tiffin* (1909), 26 R. P. C. 473; *Cusenier* v. *Gaiety Bars* (1902), 19 R. P. C. 357. As to exceptional cases, see *Coombe* v. *Mendit* (1913), 30 R. P. C. 709; *Magnolia Metal Co.* v. *Atlas Metal Co.* (1897), 14 R. P. C. 389, as to the defendant Pound.

(*t*) *Catterson* v. *Anglo-Foreign Manufacturing Co.* (1911), 28 R. P. C. 74. As to the position of a wharfinger, see *Hunt* v. *Manière* (1864), 34 Beavan, 157.

(*u*) See p. 33.

(*x*) *Johnston* v. *Orr-Ewing* (1882), 13 Ch. D. p. 464; 7 A. C. p. 229; *Perry* v. *Hessin* (1912), 29 R. P. C. p. 528.

(*y*) See *Hendriks* v. *Montagu* (1881), 17 Ch. D. p. 646.

(*z*) *Upmann* v. *Forester* (1883), 24 Ch. D. 231; and see *Weingarten* v. *Bayer* (1905), 22 R. P. C. p. 350. Cf. *Wittman* v. *Oppenheim* (1884), 27 Ch. D. p. 268.

(*a*) Actions against innocent retailers are not regarded with favour by the Court if proceedings could be taken against the real offender: *e.g.*, *American Tobacco Co.* v. *Guest* (1892), 9 R. P. C. 218.

such a complaint may run some risk of being unable to prove apprehension of repetition (*b*). If a defendant desires to submit, he must offer all that the plaintiff is entitled to (*c*), including the costs of obtaining judgment (*d*), which judgment should be given in open Court (*e*), and without attaching any condition (*f*). If such an offer is made, and the plaintiff does not adopt the speediest manner of obtaining judgment in Court, but goes on with the action, either claiming relief which he could have obtained on motion for judgment (*g*), or further relief to which he is not entitled (*h*), a special order as to costs will usually be made to meet the justice of the case (*i*), and the discretion of the judge as to costs will not be interfered with unless exercised on a wrong principle (*k*).

In cases of fraud the plaintiff is not bound to be satisfied with an undertaking (*l*), but if he fails to make out the charge of fraud, this may be taken into account in the order as to costs (*m*). A defendant cannot at the same time contest the plaintiff's right and seek to rely on the plea that the action was unnecessary because he did not intend to repeat the acts complained of (*n*).

(*b*) *E.g.*, *Leahy* v. *Glover* (1893), 10 R. P. C. 141; *Bass* v. *Laidlaw* (1909), 26 R. P. C. 211; *Burberrys* v. *Watkinson* (1906), 23 R. P. C. 141. Contrast *Borril* v. *Bodega* (1915), 33 R. P. C. p. 155.

(*c*) *Touge* v. *Ward* (1869), 21 L. T. 480; *Hat Manufacturers Supply Co.* v. *Tomlin* (1906), 23 R. P. C. 413; *Yentnum* v. *Homberger* (1912), 29 R. P. C. 645.

(*d*) *Burgess* v. *Hills* (1858), 26 Beav. 244; *Upmann* v. *Forester*, *supra*; *Wittman* v. *Oppenheim*, *supra*.

(*e*) *Gandy* v. *Fleming* (1901), 18 R. P. C. 276; *Smith* v. *Service, Reeve & Co.* (1914), 31 R. P. C. 319; and cf. *Royal Warrant Holders* v. *Kitson* (1909), 26 R. P. C. 157.

(*f*) *Clay* v. *Godfrey Phillips, Ltd.* (1910), 27 R. P. C. 508.

(*g*) *E.g.*, *Rippingilles Co.* v. *Clarke's Syphon Stove Co.* (1917), 34 R. P. C. 365.

(*h*) *E.g.*, damages or an account of profits where not recoverable, *Moet* v. *Couston* (1864), 33 Beav. 578; *Millington* v. *Fox* (1838), 3 Myl. & Cr. 338; *Slazenger* v. *Spalding* (1910), 27 R. P. C. 20; but as to damages, see p. 39, *post*.

(*i*) See cases cited in last two notes; *Clarke* v. *Hudson* (1901), 18 R. P. C. 310; and other cases cited in Sebastian, pp. 262, 263.

(*k*) *Lever Bros.* v. *Mashro. &c. Society* (1912), 29 R. P. C. 225. As to the limits to the discretion to deprive a successful defendant of costs, see *King* v. *Gillard* (1905), 22 R. P. C. 327.

(*l*) *Smith* v. *Carron Co.* (1896), 13 R. P. C. 108; *Jameson* v. *Johnston* (1901), 18 R. P. C. 259.

(*m*) *E.g.*, *O. T., Ltd.* v. *Cummings* (1915), 32 R. P. C. 69.

(*n*) *McAndrew* v. *Bassett* (1864), 4 De G. J. & S. 380. Cf. *Findlater* v. *Newman* (1902), 19 R. P. C. p. 241.

If the plaintiff can show a *primâ facie* right (*o*), and applies without any unexplained delay (*p*), an interlocutory injunction will be granted if the damage likely to result in case of the acts being continued, outweighs the possibility of damage being caused by granting the injunction (*q*). It is consequently a usual practice to apply for interlocutory relief, and this is a convenient course, as it frequently results in the motion being treated as the trial of the action and further costs being saved. Interlocutory injunction.

The Court will further, where necessary, order the delivery up or destruction upon oath of all offending labels, cards, tickets, advertising matter, &c. (*r*), or the production of the goods wrongfully marked for the purpose of erasure of the spurious mark (*s*). Destruction of the goods will not generally be ordered if it is possible without destruction satisfactorily to erase the spurious marks (*t*), and if the plaintiff has delayed taking action after knowledge of the infringement, the Court may be influenced by that fact in considering whether destruction should be ordered (*u*). Delivery up.

It has been pointed out that the action for infringement or passing-off developed originally from the Common Law action for deceit, in which damages were only recoverable on proof of fraud (*x*). The Courts of Equity did not at that time award damages, and the power to grant compensation in cases of infringement, by ordering an account of profits, was treated as only applicable to cases where the defendant was aware of the plaintiff's mark (*y*). It consequently came to be thought that neither damages nor an account of profits could be obtained in the case of infringement without knowledge, and this rule was held to be Damages or account of profits.

(*o*) The right need not be established beyond all doubt: *Read* v. *Richardson* (1881), 45 L. T. N. S. 54; particularly if there is reason to suspect fraud: *Radde* v. *Norman* (1872), L. R. 14 Eq. 348.

(*p*) As to delay, contrast *Hayward* v. *Peakall* (1909), 26 R. P. C. 89, and *Army and Navy Co-op. Soc., Ltd.* v. *Army, Navy and Civil Service Co-op. Soc. of S. Africa, Ltd.* (1902), 19 R. P. C. 574, with *Yost Typewriter Co., Ltd.* v. *Typewriter Exchange Co., ibid.* p. 422. As to the effect of delay on the right to an injunction at the trial, see p. 35, *ante*.

(*q*) *Read* v. *Richardson, supra; Alaska Packers Assn.* v. *Crooks* (1899), 16 R. P. C. 503, where the plaintiffs eventually failed at the trial: 18 R. P. C. 129.

(*r*) *E.g., Farina* v. *Silverlock* (1858), 4 K. & J. 650.

(*s*) *E.g., Dent* v. *Turpin* (1861), 2 J. & H. 139.

(*t*) *Slazenger* v. *Feltham* (1889), 6 R. P. C. 531.

(*u*) See *County Chemical Co.* v. *Frankenburg* (1904), 21 R. P. C. 722.

(*x*) See p. 2, *ante*.

(*y*) *Edelsten* v. *Edelsten* (1863), 1 De G. J. & S. 185.

equally applicable to the case of infringement of the statutory rights under the Act of 1905 (*z*). Orders for inquiries or accounts have, therefore, sometimes been limited, so that the assessment should commence from the date when the defendants first became aware of the plaintiff's mark (*a*). Having regard to the speeches, particularly that of Lord Parker, in *Spalding* v. *Gamage* (*b*), and to the observations in the Court of Appeal during the argument on the inquiry as to damages (*c*) (although in that case there was no doubt as to the defendant's knowledge), it would seem that the rule in favour of innocent infringers is rather a matter of indulgence than of strict legal right. The injury to the plaintiff is the same whether the defendant knew that he was inflicting it or not. The plaintiff may elect between an inquiry as to damages and an account of profits, but cannot obtain both (*d*); and even if the plaintiff has established a right to nominal damages (*e*), an inquiry or an account may still be refused if it is clear that nothing substantial will be recovered (*f*). So also, where there are special circumstances, such as delay or acquiescence, the inquiry or account may be limited to a particular period (*g*), or refused altogether (*h*). The account, if ordered, will be an account of the profits made by the sales under the mark as to which the injunction is granted (*i*). In the case of damages, it will not be assumed that the plaintiff has necessarily been deprived of a profit on every sale effected by the defendant (*k*), but the facts proved may in certain cases justify

(*z*) *Slazenger* v. *Spalding* (1910), 27 R. P. C. 20, following *Ellen* v. *Slack* (1880), 24 Sol. J. 290, a case under the Act of 1875.

(*a*) *E.g.*, *Horsfield* v. *Walkden* (1911), 28 R. P. C. 175.

(*b*) (1915), 32 R. P. C. 273.

(*c*) (1918), 35 R. P. C. 101, at p. 113.

(*d*) *Lever* v. *Goodwin* (1887), 4 R. P. C. p. 507; *Weingarten* v. *Bayer* (1905), 22 R. P. C. p. 351; *Neilson* v. *Betts* (1871), L. R. 5 H. L. 1. See, as to discovery, p. 42, *post*.

(*e*) *Blofeld* v. *Payne* (1833), 4 B. & Ad. 410.

(*f*) *E.g.*, *Sanitas Co.* v. *Condy* (1887), 4 R. P. C. 530; *Boord* v. *Huddart* (1904), 21 R. P. C. 149.

(*g*) *Ford* v. *Foster* (1872), L. R. 7 Ch. p. 627. Mellish, L. J., assumes that in any case the account would be limited to the six years preceding the writ: *ibid.* p. 633.

(*h*) *Reddaway* v. *Stevenson* (1903), 20 R. P. C. 276; and see *Magnolia Metal Co.* v. *Atlas Metal Co.* (1897), 14 R. P. C. 389.

(*i*) *Lever* v. *Goodwin*, *supra*; *Saxlehner* v. *Apollinaris Co.* (1897), 14 R. P. C. 645; *Weingarten* v. *Bayer*, *supra*.

(*k*) *Leather Cloth Co.* v. *Hirschfield* (1865), L. R. 1 Eq. 299.

such an inference (*l*). But the damages are not limited merely to the loss of profits on articles which the defendant has sold. A trade may have been destroyed (*m*), or there may be injury to reputation if the goods sold are inferior (*n*), and the value of the trade mark as being an indication of the plaintiff's goods exclusively may be injured (*o*). The proper form, therefore, for an order is for an inquiry as to what damages (if any) the plaintiffs have sustained by reason of the acts the repetition of which is restrained (*p*). It has been held that where a defendant has a claim against a third party for damages for breach of warranty under sect. 17 of the Merchandise Marks Act, 1887, third party procedure is applicable (*q*).

Practice and procedure.

The practice and procedure in relation to actions for infringement and passing-off are governed by the ordinary provisions applicable to other actions of the same class. The distinction between the old Common Law action founded on deceit, the equitable proceedings, and actions based on the statutory right, must be observed. Thus the first could, no doubt, still be brought in the County Court, but not either of the last two (*r*). Further, the old Common Law action is subject to the rule *actio personalis moritur cum personâ* (*s*), whereas if the plaintiff's claim is based on injury to a right of property, or the defendant is in possession of profits for which he is liable to account, the death of either party will not put an end to the action (*t*).

(*l*) *Alexander* v. *Henry* (1895), 12 R. P. C. 360. Contrast *Kinnell* v. *Ballantine* (1910), 27 R. P. C. 185.

(*m*) *Alexander* v. *Henry* (1895), 12 R. P. C. 360.

(*n*) *Ainsworth* v. *Walmsley* (1866), L. R. 1 Eq. p. 524; *Spalding* v. *Gamage* (1918), 35 R. P. C. 101.

(*o*) *E.g.*, in *Spalding* v. *Gamage, supra,* a part of the damages awarded was in respect of the cost of counter-advertisement by the plaintiffs to correct the impression created by the defendants' advertisements. Damages for wrongfully registering a trade mark were refused in *Reid* v. *Thomson* (1905), 22 R. P. C. 376; 23 R. P. C. 153.

(*p*) *Davenport* v. *Rylands* (1865), L. R. 1 Eq. p. 308; *Spalding* v. *Gamage, supra.*

(*q*) *Pidoux* v. *Beneckendorff* (1914), 31 R. P. C. 65.

(*r*) *Bow* v. *Hart* (1905), 22 R. P. C. 222, decided on the Act of 1883. It may further be argued that the right conferred by sect. 39 of the Act of 1905 is a franchise.

(*s*) *Goddard* v. *Goddard* (1918), 35 R. P. C. 21.

(*t*) *Oakey* v. *Dalton* (1887), 4 R. P. C. 313.

Jurisdiction.

If a wrong is committed or threatened within the jurisdiction, leave may be obtained to issue a writ on a defendant domiciled outside the jurisdiction of the Court (*u*), but the order may be discharged on the defendant's application if the balance of convenience is against trial in this country (*x*).

Pleading and particulars.

The plaintiff must show by his statement of claim whether he intends to rely on his statutory rights, or his rights independently of the statute, or both (*y*). If he alleges fraudulent intention on the part of the defendant, this must be pleaded (*z*), and particulars must be given of any cases of deception or attempted deception intended to be relied upon at the trial (*a*); but apart from such particular cases, evidence of sales which are only relevant to the quantum of damages may be reserved for the inquiry which will be ordered in appropriate cases (*b*). So also where a defendant alleges user by other traders of the mark which the plaintiff claims to be distinctive of his goods, he will be ordered to give particulars of any specific cases relied upon (*c*).

Discovery and inspection.

If misrepresentation by the plaintiff is set up as a defence, this must be pleaded (*d*). Discovery and inspection will be ordered upon the usual principles, notwithstanding that the person required to make discovery might be liable to prosecution under the Merchandise Marks Act (*e*). The discovery ordered before trial must be material to the issues to be determined at the hearing (*f*),

(*u*) See R. S. C., O. XI. and notes thereto in the Annual Practice. As to deception abroad, see pp. 6, 27, *ante*.

(*x*) *E.g.*, *Kinahan* v. *Lyle* (1891), 8 R. P. C. 18, and see notes in the Annual Practice; and as to convenience, *Marshall* v. *Marshall* (1888), 38 Ch. D. 330.

(*y*) See p. 13, and *Andrew* v. *Kuehnrich* (1913), 30 R. P. C. 93, 677.

(*z*) *Ash* v. *Invicta Manufacturing Co.* (1912), 28 R. P. C. 252, 597; 29 R. P. C. 465.

(*a*) *Humphries* v. *Taylor Drug Co.* (1888), 5 R. P. C. 687; *Whitstable, &c. Co.* v. *Hayling, &c. Co.* (1900), 17 R. P. C. p. 470; *Imperial Tobacco Co.* v. *Purnell*, 20 R. P. C. 718; but the names of the persons to whom the sales were made need not be given: *Duke* v. *Wisden* (1897), 77 L. T. N. S. 67; *Blackburn* v. *Lodge*, Ann. Practice, 1922, p. 497; and see Seb. p. 247.

(*b*) As to inquiry and account of profits, see p. 39.

(*c*) *Boake Roberts* v. *Wayland* (1909), 26 R. P. C. 249; *Anglo-Swiss, &c. Co.* v. *Pearks* (1903), 20 R. P. C. 509; *Aquascutum, Ltd.* v. *Moore, ibid.* 640; *Schweppes* v. *Gibbens* (1905), 22 R. P. C. 116. See also *Star Cycle Co.* v. *Frankenburgs* (1907), 24 R. P. C. 46, 405.

(*d*) See p. 35, *ante*.

(*e*) Merchandise Marks Act, 1887, s. 19.

(*f*) *E.g.*, *Howe* v. *McKernan* (1862), 30 Beav. 547; *Andrew* v. *Kuehnrich* (1912), 29 R. P. C. 698.

and not merely to the issues which may become relevant on an inquiry as to damages or in taking an account of profits (*g*). When the latter stage is reached further discovery may be ordered (*h*). Discovery may also be ordered on a motion to rectify the register (*i*). Any order for discovery is also subject to the ordinary rule that it must not be oppressive or sought only for an ulterior purpose (*k*).

(*g*) *Fennessy* v. *Clark* (1887), 37 Ch. D. 184.

(*h*) *Leather Cloth Co.* v. *Hirschfield* (1863), 1 H. & M. 295; *Powell* v. *Birmingham Vinegar Co.* (1897), 14 R. P. C. 1. It is a consideration to be borne in mind by a plaintiff in choosing between an account of profits and an inquiry as to damages that in the latter case, in order to ascertain the measure of his damages, some disclosure may have to be made as to how he arrives at the profits which he claims that he would have made.

(*i*) *Wills' T. M.* (No. 1), 9 R. P. C. 346.

(*k*) *Carver* v. *Pinto Leite* (1871), L. R. 7 Ch. 90; *Benbow* v. *Low* (1880), 16 Ch. D. 93.

TRADE MARKS ACT, 1905.

[5 Edw. 7, c. 15.]

Printed with Amendments made by the Act of 1919 (*a*).

An Act to consolidate and amend the Law relating to Trade Marks. [11th August, 1905.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

*1. This Act may be cited as the Trade Marks Act, 1905 (*a*).

Commencement of Act.

*2. This Act shall, save as otherwise expressly provided, come into operation on the first day of April one thousand nine hundred and six (*b*).

(*a*) The Trade Marks Act, 1905, has been amended by the Trade Marks Act, 1914 (see App. C.), and the Trade Marks Act, 1919. Parts I. and II. of the latter Act effect substantial changes in the law, and are noted separately. Part III. effects certain less material changes and also some amendments of a quite minor character. In this edition these are incorporated in the text of the Act of 1905, new words being included in brackets, the original wording of the Act of 1905 being shown in italics.

The Trade Marks Acts, 1905, 1914, and 1919, and so much of the Patents and Designs Acts, 1907—1919, as relates to trade marks (see App. A.), may be cited together as the Trade Marks Acts, 1905—1919.

*Sections, the whole or part of which is not applied to marks registered in Part B., are marked with an asterisk. See sect. 3 of the Trade Marks Act, 1919.

(*b*) The legislation in force immediately before that date was contained in the Patents, Designs and Trade Marks Acts, 1883—1902, and in considering decisions prior to April, 1906, the language of those Acts or of the earlier legislation must, of course, be considered.

As to the effect of the Act of 1905 on marks registered under previous Acts, see sect. 6 and notes thereto.

Part I.

Definitions (*c*).

Definitions.

3. In and for the purposes of this Act (unless the context otherwise requires):—

A "mark" shall include a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof (*d*):

A "trade mark" shall mean a mark used or proposed to be used upon or in connexion with goods for the purpose of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with, or offering for sale (*e*):

A "registrable trade mark" shall mean a trade mark which is capable of registration under the provisions of this Act:

"The register" shall mean the register of trade marks kept under the provisions of this Act (*f*):

A "registered trade mark" shall mean a trade mark which is actually upon the register (*g*):

"Prescribed" shall mean, in relation to proceedings before the Court, prescribed by rules of court, and in other cases, prescribed by this Act or the Rules thereunder (*h*):

"The Court" shall mean (subject to the provisions for Scotland, Ireland, and the Isle of Man) His Majesty's High Court of Justice in England (*k*).

(*c*) The definitions of "mark," "trade mark" and "registrable trade mark" were introduced by this Act. In the earlier Acts, the only definition was one which took the form of an enumeration of the particulars which a trade mark, other than an "old mark," had to contain in order to be registrable, analogous to the provisions of sect. 9 of the present Act. The expression "mark" was used in such earlier Acts in a context with "device," "heading," and subsequently "brand," which made it necessary to construe those words as excluding marks consisting only of a name or word not otherwise registrable: *Leonard & Ellis' T. M.* (1884), 26 Ch. D. 288, 295; *Pirie* v. *Goodall* (1892), 9 R. P. C. 17.

There is now a logical sequence: to be registrable under the Act of 1905, a symbol must be, firstly, a mark, a requisite which relates to its inherent character; secondly, it must be a "trade mark," a condition which involves a connection between the mark and a trader; thirdly, it must be shown, subject to a proviso in favour of "old marks," to contain at least one of certain enumerated particulars, a fact which may be established either by reference to the inherent character of the mark or by evidence.

(*d*) Inasmuch as the enumeration does not purport to be exhaustive, the cases on the older Acts in which the meaning of "brand," "heading," &c. were discussed are no longer of importance, but the word "mark" itself implies the notion of something applicable to the goods or their covering: see *Singer Manufacturing Co.* v. *Wilson* (1876), 2 Ch. D. 434, 441. Such application may be effected by attaching a label or ticket to the goods, or by branding or stamping the mark on the actual article sold, as in the case of iron or soap, or by weaving the mark into the actual goods: *Harter* v. *Souvasoglu* (1875), W. N. 11, 101; and stripes of colour running throughout the

length of the article may constitute a "mark": *Reddaway & Co.'s Appn.* (1914), 31 R. P. C. 147, 153.

In respect of cotton goods, no mark consisting of a line heading alone has been registered for many years: see now sect. 64 (10) (b).

(*e*) As to the general effect of this definition, see p. 9. "Proposed to be used" means "proposed to be used in this country forthwith": *Neuchatel Co.'s Appn.* (1913), 30 R. P. C. 349.

"Manufacture, selection, &c.": where goods pass through different hands before reaching the public, difficult questions may arise as to who are the real proprietors of the mark. In each case, subject to the possible effect of sect. 41, the question is one of fact as to whether the mark indicates association with a particular manufacturer or a particular selector, &c., or a combination of two or more. Thus, a retailer or importer will not be entitled to registration as proprietor of a mark which in fact indicates the manufacturer: *Thorn & Sons* v. *Pimms* (1909), 26 R. P. C. 221; *Neostyle Manufacturing Co.'s T. M.* (1903), 20 R. P. C. 329, 803; *Apollinaris Co.'s T. Ms.* (1891), 8 R. P. C. 137; *European Blair Co.'s T. M.* (1896), 13 R. P. C. 600; nor can he successfully oppose the manufacturer's application to register: *Itala Fabrica's Appn.* (1910), 27 R. P. C. 493; contrast *Neuchatel Co.'s Appn., supra.* Cf. cases in which an agent or retailer has failed in an action for infringement or passing off: *Richards* v. *Butcher* (1890), 7 R. P. C. 288; *Dental Manufacturing Co.* v. *De Trey* (1912), 29 R. P. C. 617; *Goodfellow* v. *Prince* (1887), 35 Ch. D. 9; *Hirsch* v. *Jonas* (1876), 3 Ch. D. 584 (interlocutory decision only). Contests between producer and retailer are illustrated by *Saxlehner* v. *Apollinaris Co.* (1897), 14 R. P. C. 645, and *Van Zeller* v. *Mason, Cattley & Co.* (1908), 25 R. P. C. 37. If a defendant in an action for infringement disputes the plaintiff's proprietorship of the mark, he should move to expunge the entry: *Apollinaris Co.* v. *Snook* (1890), 7 R. P. C. 474.

A mark may indicate the manufacturer of a metal, though it is only known to the public on goods finished by another hand: *Magnolia Metal Co.'s T. Ms.* (1897), 14 R. P. C. pp. 628 *et seq.* On the other hand, a mark may indicate a retailer, though actually applied by a manufacturer: *Defries* v. *Electric Ordnance Co.* (1906), 23 R. P. C. 341, or though used only on the goods of a particular manufacturer: *Ullman* v. *Leuba* (1908), 25 R. P. C. 673; and see *Knott* v. *Marshall* (1894), W. N. 214.

As to a selector's mark, see *Major* v. *Franklin* (1908), 25 R. P. C. 407.

Again, a mark may indicate the goods of a consignee abroad: *New Atlas Co.'s T. M.* (1918), 35 R. P. C. 269, or possibly those of a consignee abroad and a producer in Great Britain: *Rivière's T. M.* (1885), 53 L. T. 237. Similarly, where two or more parties are concerned in what is really a joint adventure, the meaning of the mark will in each case be a question of fact: *Robinson* v. *Finlay* (1877), 9 Ch. D. 487; *Re Tarantella* (1910), 27 R. P. C. 573, 762. With reference to the latter case, it must be observed that the right of either party to such an adventure to use the mark after the adventure has come to an end must be subject to the condition that the public should not be deceived: *Jones' T. M.* (1885), 53 L. T. N. S. 1; but

the joint adventure may be resumed, in which case there is no difficulty. Mere origination of the article or its get up will not give the originator any rights in respect of such get up or of a mark which indicates manufacture: *Frankau* v. *Pfleuger* (1909), 28 R. P. C. 130; *Freeman* v. *Sharpe* (1899), 16 R. P. C. 205; and cf. *Condy* v. *Mitchell* (1878), 37 L. T. N. S. 268, 766.

If a mark has gained a reputation as a manufacturer's mark, it may be deceptive for the proprietor to continue to use it if he ceases to manufacture, but this will depend on the particular circumstances: *Hotpoint Co.'s Appn.* (1921), 38 R. P. C. p. 71.

"Certification": this word was probably included to meet the case of special trade marks introduced by sect. 62.

(*f*) As to the register, see sects. 4—7 and notes.

(*g*) As this section is applied to marks registered in Part B. under the Act of 1919, the expression "registered mark" will generally include marks registered in Part B., but as certain sections, *e.g.*, sect. 41, are not applied, the phrase in such sections must be read as limited to marks registered in Part A.

(*h*) For Rules under the Act, see App. D. No special rules of Court relating to trade marks have as yet been made.

(*k*) See sects. 69—72.

Register of Trade Marks.

Register of trade marks.

4. There shall be kept at the Patent Office for the purposes of this Act a book called the Register of Trade Marks, wherein shall be entered all registered trade marks with the names and addresses of their proprietors, notifications of assignments and transmissions, disclaimers, conditions, limitations, and such other matters relating to such trade marks as may from time to time be prescribed. The register shall be kept under the control and management of the Comptroller-General of Patents, Designs, and Trade Marks, who is in this Act referred to as the Registrar.

This section comes from sect. 78 of the Act of 1883. The Register is now divided into two parts, Part A. for marks registered under the Act of 1905 or prior Acts, Part B. for marks registered in, or removed to, Part B. under the Act of 1919; see p. 106.

As to the register of the Cutlers' Company for Sheffield Marks, see sect. 63, and as to the Manchester Branch of the Trade Marks Registry of the Patent Office, see sect. 64.

The Comptroller is appointed by the Board of Trade subject to the sanction of the Treasury: see sect. 63 of the Patents and Designs Act, 1907.

Trust not to be entered on register.

5. There shall not be entered in the register any notice of any trust expressed, implied, or constructive, nor shall any such notice be receivable by the Registrar.

This section comes from sect. 85 of the Act of 1883. Though not capable of entry on the register, trusts may be enforced: see sect. 38.

Under prior Acts, in order to correct an entry, where the person registered as proprietor was registered in circumstances which made him in law a trustee for the true owner, there was sometimes a difficulty raised which made it necessary first to expunge the existing entry, or to have a formal assignment: see notes to *Ward, Sturt & Sharp's T. M.* (1881), 44 L. T. 97; *Rivière's T. M.* (1885), 53 L. T. 237; *Kingsford & Son's Appn.* (1889), 6 R. P. C. 413; *Australian Wine Co.'s T. M.* (1885), 61 L. T. 427; *Greenlees' T. M.* (1892), 9 R. P. C. 93. Under the present Act this may be unnecessary if the registered proprietor makes the application himself, as sect. 32 of the Act of 1905 is not limited to clerical errors as was sect. 91 (b) of the Act of 1883.

In proper cases the defective title may also be made good by an assignment by the trustee: *Wellcome's T. M.* (1886), 3 R. P. C. 76.

If the existence of such a trust is disputed, proceedings should be taken under sect. 35.

Incorporation of existing register.

*6. The register of trade marks existing at the date of the commencement of this Act, and all registers of trade marks kept under previous Acts, which are deemed part of the same book as such register, shall be incorporated with and form part of the register. Subject to the provisions of sections thirty-six and forty-one of this Act the validity of the original entry of any trade mark upon the registers so incorporated shall be determined in accordance with the statutes in force at the date of such entry, and such trade mark shall retain its original date, but for all other purposes it shall be deemed to be a trade mark registered under this Act.

The first sentence of this section corresponds to sect. 14 (2) of the Act of 1883. As regards the remainder of the section, it was previously the law that a mark was liable to be removed on the ground that it was not registrable on the facts and law as they stood at the date of registration: *Apollinaris Co.'s T. Ms.* (1891), 8 R. P. C. 137, 163. Sect. 36 of the Act of 1905 alters the law on this point, and leaves little on which sect. 6 can operate in this respect. Now that the Act of 1905 has been in force for more than seven years, the earlier statutes are no longer material as determining the validity of the original registration: see notes to sects. 36 and 41.

The words "trade mark registered under this Act" do not occur elsewhere in the Act; the meaning of the final sentence would seem to be that the rights conferred by registration should be the same for all trade marks, whether registered under previous Acts or under this Act; but see *Woodward* v. *Boulton Macro.* (1915), 32 R. P. C. 173, 196.

Inspection of and extract from register.

7. The register kept under this Act shall at all convenient times be open to the inspection of the public, subject to such regulations as may be prescribed; and certified copies, sealed with the seal of

the Patent Office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

As to certificates, see Rules 99—101.

Registrable Trade Marks.

8. A trade mark must be registered in respect of particular goods or classes of goods. Trade mark must be for particular goods.

See Rule 5. A guide to the classification of goods is obtainable *gratis* from the Patent Office.

Registration ought only to be applied for in respect of the goods for which the mark is used or proposed to be used, and if registration for other goods is obtained the entry may be struck out or limited to some particular goods either upon the application of the proprietor (sect. 32 (4)) or of any person aggrieved (sect. 35 (1) and Trade Marks Act, 1919, s. 9). See notes to sect. 35. The classification contained in the third schedule to the Rules (App. D.) must not be taken as any guide upon the question whether different goods are of the same description for the purpose of sect. 19 or sect. 24: *Australian Wine Importers' T. M.* (1889), 6 R. P. C. 311; and see notes to sect. 19.

***9.** A registrable trade mark must contain or consist of at least one of the following essential particulars (*a*):— Registrable trade marks.

(1) The name of a company, individual, or firm represented in a special or particular manner (*b*);

(2) The signature of the applicant for registration or some predecessor in his business (*c*);

(3) An invented word or invented words (*d*);

(4) A word or words having no direct reference to the character or quality of the goods (*e*), and not being according to its ordinary signification a geographical name or a surname (*f*);

(5) Any other distinctive mark, but a name, signature, or word or words, other than such as fall within the descriptions in the above paragraphs (1), (2), (3), and (4), shall not [be registrable under the provisions of this paragraph except upon evidence of its distinctiveness], *except by order of the Board of Trade or the Court, be deemed a distinctive mark:* (*See* note (*a*).)

Provided always that any special or distinctive word or words, letter, numeral, or combination of letters or numerals used as a trade mark by the applicant or his predecessors in business before

the thirteenth day of August one thousand eight hundred and seventy-five, which has continued to be used (either in its original form or with additions or alterations not substantially affecting the identity of the same) down to the date of the application for registration shall be registrable as a trade mark under this Act (*g*).

For the purposes of this section "distinctive" shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons. (*See* note (*a*).)

In determining whether a trade mark is so adapted, the tribunal may, in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered. (*See* note (*a*).)

(*a*) This section differs in material respects from the corresponding provisions in sect. 10 of the Act of 1875, sect. 64 of the Act of 1883, and sect. 10 of the Act of 1888.

The words in square brackets were substituted for the words in italics by sect. 7 of the Act of 1919. Before this change a special application under this sub-section was necessary in the case of a name, signature, word or words, other than such as fell within the preceding sub-sections, and the applicant was called upon to elect whether he would apply for the necessary order to the Board of Trade or to the Court. This preliminary application, which did not result in any final decision as to whether the mark was or was not distinctive (see *Crosfield's Appn.* (1909), 26 R. P. C. 837), is now unnecessary, and there is no longer any difference in *procedure* between applications for such trade marks and applications for other marks, but in the case of the former, evidence is essential, whilst in the case of the latter it is optional. Under the new procedure, when an application for a name or word is made, if the Registrar is of opinion that the mark does not fall within any of the sub-sects. (1) to (4), he can himself consider the question whether it falls within sub-sect. (5) without requiring a special application to be made.

It is conceived that the change was primarily intended to affect only the procedure, and not the principles upon which the tribunal should act in considering applications for words and names; but the absence of any limitation in regard to the character of the evidence required should meet an objection which has sometimes been raised, viz., that evidence is of little value unless it relates to user of the mark in the exact form for which registration is sought. This objection was based on the concluding words of the section interpreted in the light of old decisions on the Acts of 1875 and 1883 as to what constituted "user as a trade mark." It was suggested in *Lea's Appn.* (1913), 30 R. P. C. at p. 226, and relied upon in *Crawford's Appn.* (1917), 34 R. P. C. 94, but did not prevail in *Cadbury's Appn.* (1915), 32 R. P. C. 9. It is clear that evidence proving that "Cadbury's" had become distinctive must be relevant upon the issue as to whether "Cadbury" alone is adapted to distinguish.

Sub-sect. (5) was a new departure introduced by the Act of 1905, which makes it possible to obtain registration for a mark irrespective of its features, provided that it possesses the one essential quality of being adapted to distinguish the goods of the proprietor from those of other persons. The ambit of this sub-section is such as to reduce materially the importance of the other sub-sections; and as it introduces the word "distinctive," it is convenient to examine it first.

"Mark" is defined by sect. 3: see notes thereto. "Distinctive" is defined in the section itself. This definition, when read with the concluding paragraph, shows that the Act contemplates two factors which may contribute in giving to a mark the quality of being adapted to distinguish. There are, firstly, the features of the mark itself in relation to its proposed use as a trade mark, and, secondly, the effect which actual use of a trade mark may have produced. The first factor has sometimes been referred to as a quality inherent in the mark, and it has been said that it is not legitimate to speculate upon the effect which the grant of a monopoly by registration may produce: *Du Cros' Appn.* (1913), 30 R. P. C. 660, 671. It must, however, be observed that it is impossible to consider the mark entirely without regard to the use to which it is proposed to be put: *Diamond T. Motor Co.'s Appn.* (1921), 38 R. P. C. 373. Thus "match," though, no doubt, incapable of becoming distinctive as a trade mark for matches, is not inherently incapable of distinguishing other goods. The second factor is one by which distinctiveness may be acquired where a mark has already been used for the purpose of distinguishing the proprietor's goods: see observations in *Gramophone Co.'s Appn.* (1910), 27 R. P. C. 689, 697. Distinctive.

When such a mark comes up for consideration, the tribunal is not limited to an examination of the features of the mark considered in the abstract. It may then be possible to say that the question whether the mark is adapted to distinguish is solved by observing the extent to which the mark, or a mark substantially identical with it, does in fact distinguish: *Crosfield's Appn.* (1909), 26 R. P. C. 837, p. 857, 858. There may be marks, especially names and words, as to which it is possible to say that no amount of user can render them adapted to distinguish, *e.g.*, a word which is a mere laudatory epithet and nothing else, such as "best," or the word "matches" as a trade mark for matches: see *Crosfield's Appn.*, *supra*, p. 858; *Gramophone Co.'s Appn.*, *supra*, p. 697. In the case of words, signatures and names, not within other sub-sections, the statute provides that the test of evidence *must* be applied; in other cases it is open to the applicant to satisfy the tribunal by evidence that a mark which at first sight might not appear adapted to distinguish, has proved to be so in fact. In any doubtful case an applicant will be well advised to file any evidence which may be available, and on this issue adoption and user abroad may be of assistance: *Diamond T. Motor Co.'s Appn.* (1921), 38 R. P. C. 373.

In so far as "adapted to distinguish" involves the notion of suitability, the restrictions or inconvenience which may be caused to other traders are material considerations, in reference to which the tribunal must exercise a judicial discretion: *Crosfield's Appn.* and *Du Cros' Appn.*, *supra*. Every decision must therefore be regarded

as given upon the particular facts of each case (see *Thorne* v. *Sandow* (1912), 29 R. P. C. 440, 451), and the observations and examples given below are only intended to indicate the trend of judicial decisions as a guide to persons selecting a trade mark; they must not be regarded as laying down principles applicable to all cases.

Sect. 9 (5). *Marks other than names, signatures or words.*—In deciding whether a mark is distinctive, it must be looked at as a whole: *British Thomson-Houston Co.'s Appn.* (1917), 34 R. P. C. 169, 177; but if, when so viewed, the mark is seen to consist substantially only of a word or name which is not registrable without evidence, immaterial additions will not take it out of that category: see *Massachusetts Saw Works' Appn.* (1918), 35 R. P. C. p. 145. Under the former Acts an analogous principle was applied: *e.g.*, *Bradley's T. M.* (1880), 9 R. P. C. 205, and cases cited in Sebastian, p. 596. But in reference to such cases it must be observed that the decisions turned on a construction of "mark" in sect. 64 of the Act of 1883, which is inapplicable to the Act of 1905 in view of the definition in sect. 3, and also that those cases are relevant now only on the question whether evidence is necessary, and not on the final question of registrability, when evidence is available: see observations on *Benz et Cie.'s Appn.* (1913), 30 R. P. C. 177, in *British Thomson-Houston Co.'s Appn.*, *supra*; *Diamond T. Motor Co.'s Appn.*, *supra*.

A picture of the article sold may be a distinctive device: *James' T. M.* (1885), 33 Ch. D. 392; though such a mark would no doubt be refused if it did not contain some feature adapted to distinguish it from any other picture of similar goods produced by other traders: see *Sphincter Grip Co.'s T. M.* (1893), 10 R. P. C. 84, and *Moore's Modern Methods' Appn.* (1919), 36 R. P. C. 6. The protection afforded by such marks would in any case be narrow.

The portrait of an individual may similarly be a good mark, though not necessarily so in the case of an individual who is associated with the character of the goods in question: see *Anderson's Appn.* (1884), 26 Ch. D. 409 (portrait of Baron Liebig); cf. *Rowland* v. *Michell* (1897), 14 R. P. C. 37; *Louise* v. *Gainsborough* (1903), 20 R. P. C. 61.

Initials or letters are subject to the *primâ facie* disadvantage that other traders may have the same initials, but user may establish distinctiveness, and initials may assist in making up a distinctive combination: *British Thomson-Houston Co.'s Appn.*, *supra* (B. T.-H. in a border, allowed); *Du Cros' Appn.* (1913), 30 R. P. C. 660 (W. & G. refused, the evidence of distinctiveness being too local); *Verschure & Zoon's Appn.* (1905), 22 R. P. C. 568 (Vezet allowed, with a disclaimer); *Garrett's Appn.* (1916), 33 R. P. C. 117 (Ogee refused). The extent to which combinations of letters may become distinctive trade marks is shown by the number of cases of successful actions in respect of such marks. See cases collected in Sebastian, pp. 90 *et seq.*, and *Liquid Veneer Co.* v. *Scott* (1912), 29 R. P. C. 639; *Andrew* v. *Kuehnrich* (1913), 30 R. P. C. 93, 677; *A. G. S. Manufacturing Co.* v. *Aeroplane General Sundries Co.* (1918), 35 R. P. C. 127; *O-T., Ltd.* v. *Cumming* (1915), 32 R. P. C. 69.

Registration in Part A. is refused for letter marks for classes 23 to 25 in pursuance of sect. 64 (10) (c).

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In some cases distinctiveness has been claimed for a feature which has some purpose other than that of merely indicating trade origin, *e.g.*, a mechanical purpose, as in *Edge* v. *Niccolls* (1910), 27 R. P. C. 671, a passing off case, and *Moore's Modern Methods' Appn.*, *supra*, where a claim was made to register an illustration of part of a patented device. In the latter case the application was refused on the ground that the grant of registration might in effect extend a patent monopoly, and it may be argued that a mark is not adapted to distinguish the goods of a trader if the production of the same goods by another trader would necessarily or naturally involve the reproduction of the mark.

Names.—In connection with names it should be noted that names represented in a special or particular manner, and signatures of applicants or their predecessors are included in sub-sects. (1) and (2). As regards names generally, the number of cases in which the use of a name has been proved to be calculated to deceive indicates the importance of names as distinguishing the goods or business of a trader (see p. 22 : but before granting registration, the tribunal will always consider the possible interests of persons having the same name. This consideration must not, however, be exaggerated, and in the *Burford case* (1919), 36 R. P. C. 139, the principle was clearly recognised that the rights given by the registration of a name do not, in view of sect. 44, really alter for the worse the position of any honest person having the same name. Many surnames have been registered by order of the Board of Trade: the following cases have been considered by the Courts:—*Pope's Electric Lamp Co.'s Appn.* (1911), 28 R. P. C. 629 (Pope, refused: the judgment has been criticised in the next case); *R. J. Lea, Ltd.'s Appn.* (1912), 30 R. P. C. 216 (Boardman's, refused); *McEwan's Appn.* (1912), 29 R. P. C. 165 (McEwan's, refused); *"Teofani" T. M.* (1913), 30 R. P. C. 446 (Teofani, upheld); *Slazengers, Ltd.'s Appn.* (1914), 31 R. P. C. 501 (Slazenger, refused); *Cadbury, Ltd.'s Appn.* (1915), 32 R. P. C. 9 (Cadbury, allowed); *Muratti, Sons & Co., Ltd.'s Appn., ibid.* 77 (Muratti, allowed); *Daimler Co., Ltd.'s Appn.* (1916), 33 R. P. C. 337 (Daimler, allowed); *William Crawford & Sons, Ltd.'s Appn.* (1917), 34 R. P. C. 94 (Crawford, refused); *Moore's Appn., ibid.* 154 (Moore & Moore, allowed); *Lodge Sparking Plug Co., Ltd.'s Appn.* (1918), 35 R. P. C. 222 (Lodge, allowed); *Burford & Co., Ltd.'s Appn.* (1919), 36 R. P. C. 139 (Burford, allowed on appeal); *Winget, Ltd.'s Appn., ibid.* 75 (Winget, allowed); *Avery, Ltd.'s Appn., ibid.* 89 (Avery, allowed); *Eno, Ltd.'s Appn.* (1920), 37 R. P. C. 1 (Eno, allowed); *Thornycroft, Ltd.'s Appn., ibid.* 25 (Thornycroft, allowed). In addition to the above, a number of applications were allowed in 1921 without any opposition. They are reported in 38 R. P. C., and call for no special comment. The higher proportion of successful cases in recent years may be attributed perhaps in part to a fuller appreciation of the principles clearly enunciated in the *Burford case*, and partly to greater care on the part of the applicant in presenting his case to the Court. The most material considerations are that the area in which the name does in fact distinguish the applicant's goods should extend practically throughout the United Kingdom, that the name should not be too common, that the character of the trade should be such that names

Sect. 9 (5). generally are adapted to distinguish the goods of different makers, and that the circumstances which have contributed towards making the name distinctive should be likely to continue. Other factors, as mentioned in the *Burford case*, may apply to particular applications. As to the possible effect of the amendment to sect. 9 (5) in regard to evidence of user of a name in a slightly different form to that applied for, see p. 50, *ante;* and as to use of the mark applied for in conjunction with another mark, see *Eno's Appn., supra.*

The surname *Lawson Tait* has been registered for bedsteads in circumstances in which the name indicated a particular class of bed manufactured by the applicants: *Whitfield's Bedsteads, Ltd.'s Appn.* (1909), 26 R. P. C. 657.

Geographical names.—As to words which are not geographical in their ordinary signification, see sub-sect. (4) and notes thereto. Under sub-sect. (5), the principal consideration is whether registration would be likely to embarrass other traders, and conditions may be imposed to prevent any possibility of the name being used upon goods as to which, in its primary meaning as a geographical description, the word would be deceptive: *Apollinaris Co.'s Appn.* (1907), 27 R. P. C. 436 (Apollinaris, allowed subject to the applicants undertaking only to use the mark on water from the Apollinaris springs); *National Starch Co.'s Appn.* (1908), 25 R. P. C. 802 (Oswego, allowed); *California Fig Syrup Co.'s Appn.* (1909), 26 R. P. C. 846 (California Syrup of Figs, allowed); *Royal Worcester Corset Co.'s Appn., ibid.* p. 185 (Royal Worcester, refused); *Itala Fabbrica, &c.'s Appn.* (1910), 27 R. P. C. 493 (Itala, allowed); *Karlsbad's Appn.* (1912), 29 R. P. C. 162 (Karlsbader Wasser, allowed); *Sheffield-Simplex, &c.'s Appn.* (1915), 32 R. P. C. 145 (Sheffield-Simplex, allowed); *Berna Motors, Ltd.'s Appn., ibid.* p. 113 (Berna, allowed); and see *Burford's Appn., supra.* In connection with geographical names, reference may be made to passing off cases: see p. 24.

Signatures.—The signature of the applicant or a predecessor in business may be registered without evidence under sub-sect. 2: see notes thereto. It is possible that a signature may be distinctive, where the mere name in ordinary script would not.

Words.—The express inclusion in sub-sect. 5 of words, other than such as fall within the previous sub-sections, shows that words may be registered although they have a direct reference to the character and quality of the goods. But in such cases, unless the word is uncommon, very cogent evidence will be required that throughout the United Kingdom the word, when applied to the goods in question, is so well known as indicative of a particular trader as almost to have lost its primary meaning. A mere laudatory epithet which ought to be open to the whole trade will not be allowed, nor words which are the obvious description of the goods in question, nor any mere mis-spelt version of such words: *Crosfield's Appn.* (1909), 26 R. P. C. 837 (Perfection, refused for soap); *Orlwoola T. M., ibid.* 850 (Orlwoola, refused for woollen goods); see also *Sharpe* v. *Solomon* (1915), 32 R. P. C. 15 (Classic, for Christmas cards, removed, the evidence of distinctiveness being insufficient to support a case of passing off); *Thorne & Co.* v. *Sandow* (1912), 29 R. P. C. 440 (Health, for cocoa, removed); and cf. *Standard Ideal Co.* v. *Standard Manufacturing*

Co. (1910), 27 R. P. C. 789 (Standard, considered a mere descriptive epithet). Sect. 9 (5).

In the case of words which are popularly used as the name of an article, the question arises whether it is a "trade name" in the sense that it indicates not merely the article, but the article produced by one trader and no one else, some other name being available for the article produced by another trader. Well-known examples of such trade names are Vaseline and Bovril, registered under earlier Acts (see p. 57). Such words are generally invented words and registrable as such, but where the word, even though it is recognised in the trade as in fact used by only one manufacturer, has been adopted by the public as the name of the article by whomsoever made, it will not be registrable either as an invented word (see p. 56) or as a distinctive word under sub-sect. 5: *Cassella's Appn.* (1910), 27 R. P. C. 453 (Diamine refused for chemical substances); *Gramophone Co.'s Appn., ibid.* 689 (Gramophone refused for talking machines); *Bowden Patents, Ltd.'s Appn.* (1909), 26 R. P. C. 205 (Bowden wire refused as the name of mechanism); *De Maid's Appn.* (1914), 31 R. P. C. 305 (Demos refused as the name for a particular description of fishing gut); *Williams's Appn.* (1917), 34 R. P. C. 1, 197 (Chocaroons refused as the name of a sweet).

Special provision is now made to meet the case of a word which is the name or the only practicable name of a patented article by sect. 6 of the Act of 1919. This question is further referred to in its bearing on cases of passing off. (See p. 17.)

Examples of words within the sub-section are: "Primus" for stoves: *Hjorth's Appn.* (1910), 27 R. P. C. 461; "Overland" for motor cars, which was a word as well as a surname: *Willys-Overland Co.'s Appn.* (1920), 37 R. P. C. 243; and as combinations of words, Sheffield-Simplex and California Syrup of Figs, referred to in relation to geographical names on p. 54.

In *Hotpoint Co.'s Appn.* (1921), 38 R. P. C. 63, "Hotpoint" was allowed for certain goods, though refused for others in respect of which it had already been used descriptively by another trader.

The limitation contained in sect. 64 upon the effect of registration of cotton marks, so far as it affected words, has been removed by sect. 12 of the Act of 1919.

(*b*) The word "company" in sub-sect. (1) was first introduced by the Act of 1905. A surname alone is not the name of an individual, nor is a part of a company's name the name of the company: *Benz et Cie.'s Appn.* (1913), 29 R. P. C. 357; 30 R. P. C. 177; but such a name may be delineated or expressed, so as to constitute a distinctive device and therefore a distinctive mark registrable under sub-sect. (5) with or without evidence: *ibid.* In the last cited case evidence might have led the Court to a different conclusion: see *British Thomson-Houston's Appn.* (1917), 34 R. P. C. 169. The name of a merely fictitious character is not within sub-sect. (1), but within sub-sect. (4): *Holt's T. M.* (1896), 13 R. P. C. 16, 118. It was held, under the Act of 1883, that "Pirie's" in the genitive was not the name of an individual or firm: *Pirie* v. *Goodall* (1892), 8 R. P. C. 261; 9 R. P. C. 17. The name of a company in ordinary script is not within the sub-section: *British Milk Product Co.'s* Sect. 9 (1).

Appn. (1915), 32 R. P. C. 453. The different wording of the former Acts must be borne in mind in considering such cases as *Carroll's Appn.* (1899), 16 R. P. C. 82; *Gianaclis' T. M.* (1889), 6 R. P. C. 468; *Price's Patent Candle Co.'s Appn.* (1884), 27 Ch. D. 681; *Bradley's T. M.* (1892), 9 R. P. C. 205.

Sect. 9 (2). (*c*) In sub-sect. (2) the words "applicant for registration or some predecessor in his business" replace the words "individual or firm applying for registration" in sect. 10 of the Act of 1888. It may be doubted whether a company can have a signature: see *British Milk Product Co.'s Appn., supra;* and it would seem clear that an assumed name in the form of a signature cannot come under this sub-section, as was admitted in *Macmillan* v. *Ehrmann Bros., Ltd.* (1904), 21 R. P. C. 357, p. 367.

Sect. 9 (3). (*d*) *Invented words.*—The leading case on this subject is the "*Solio*" *case*, decided on similar words in sect. 10 of the Act of 1888: *Eastman Photographic Materials Co.'s Appn.* (1898), 15 R. P. C. 476, from which it follows that a word is not necessarily excluded from sub-sect. (3) because it has a reference to the character or quality of the goods. All previous decisions must be reviewed in the light of that case.

The sub-section suggests four points for discussion, viz.: the materiality of (1) the person who invented the word; (2) the date of the invention; (3) the purpose for which the word was invented; (4) the quantum of the invention. The context in which the sub-section appears suggests that the reason for distinguishing invented from non-invented words is that restrictions should be placed upon the power to register the latter in order to limit the monopolising of words which, as applied to the goods in question, may be useful to traders in their ordinary meaning. The material point would therefore seem to be the use which has been made of the word prior to the date of the application; if, before that date, the word has never been used except as the trade mark of a particular business, the identity of the actual inventor, the purpose which he had in mind, and the date of the invention would none of them be directly material, although each of these questions might be relevant in deciding whether the word has been so used as to have become by the date of the application a part of the ordinary English language. It is clear that invention by a predecessor in business is sufficient: *Linotype Co.'s Appn.* (No. 2) (1900), 17 R. P. C. 380 (Tachytype), and an interval between the dates of the invention and the application to register is not necessarily fatal: *ibid.; Kodak, Ltd.* v. *London Stereoscopic Co., Ltd.* (1903), 20 R. P. C. 337 (Kodak); *Société le Ferment's Appn.* (1912), 29 R. P. C. 497 (Lactobacilline), disapproving of conclusions to the contrary which might be drawn from the words used in *Hommel* v. *Bauer* (1904), 21 R. P. C. 576; *Norton Co.'s Appn.* (1919), 36 R. P. C. 153 (Alundum). The expressions of Lindley, L. J., in *Holt's T. M.* (1896), 13 R. P. C. 118, p. 121, with reference to Trilby: "it may have been once an invented word; but it long ago became too well known to fall under that head," support the view suggested above that, if the word was at some time an invented word, the real test of registrability is whether, before the date of the application, the word has acquired a

known meaning other than an indication of the goods of a particular business. See also cases where a word, though perhaps originally invented, was invented as, or has become, the name of the goods: *Gestetner's T. M.* (1907), 25 R. P. C. 156 (Cyclostyle); *Philippart* v. *Whiteley* (1908), 25 R. P. C. 565 (Diabolo); *Formalin Co.'s Appn.* (1900), 17 R. P. C. 486 (Formalin); *Williams's, Ltd.'s Appn.* (1917), 34 R. P. C. 197 (Chocaroons); and p. 55. Sect. 9 (3).

As regards the quantum of invention, nothing analogous to merit is necessary, but there must be invention and not the mere semblance of invention: *Eastman Photographic Materials Co.'s Appn., supra.* The mere introduction of a foreign word is not enough, but the fact that a word which would otherwise be regarded as invented does in fact occur in a foreign language is not necessarily fatal: *Ibid.* The mere mis-spelling or collocation of known words or initials is not invention: *National Biscuit Co.'s Appn.* (1901), 18 R. P. C. 170; 19 R. P. C. 281 (Uneeda); *Re "Orlwoola" T. M.* (1910), 26 R. P. C. 681, 850; *Garrett's Appn.* (1916), 33 R. P. C. 117 (Ogee); *Eisman & Co.'s Appn.* (1920), 37 R. P. C. 134 (Eanco); nor possibly the mere reversal of the letters of a known name: *Cording's Appn.* (1916), 33 R. P. C. 70, 83, 325 (Gnidroc). In addition to the cases cited, the following cases, which do not include any of those in which registration was refused before the "*Solio*" *case,* may also be referred to: *Kynoch & Co.'s Appn.* (1897), 14 R. P. C. 905 (Kynite, registration allowed); *Densham's T. M.* (1895), 12 R. P. C. 75, 271 (Mazawattee, registration upheld); *Field* v. *Wagel* (1900), 17 R. P. C. 266 (Savonol, registration upheld); *Neostyle Manufacturing Co.'s T. M.* (1903), 20 R. P. C. 329, 333, 803 (Neostyle, registration upheld); *Kodak, Ltd.* v. *London Stereoscopic Co.* (1903), 20 R. P. C. 337 (Panoram, removed; Kodak, upheld); *Warwick Trading Co.* v. *Urban* (1904), 21 R. P. C. 240 (Bioscope, removed); *Christy* v. *Tipper* (1904), 21 R. P. C. 97, 755 (Absorbine, removed); *Verschure & Zoon's Appn.* (1905), 22 R. P. C. 568 (Vezet, registration allowed); *Lindstroem's Appn.* (1914), 31 R. P. C. 261 (Parlograph, registration allowed); *Yalding Co.'s Appn.* (1916), 33 R. P. C. 285 (Arsenoid, refused); *Standard Woven Fabric Co.'s Appn.* (1918), 35 R. P. C. 53 (Stanwal, registration allowed).

The Act of 1883 did not include invented words in the categories of essential features, but included "fancy words not in common use." Cases decided on that Act are not properly applicable in determining whether a word is invented, and those in which registration was refused are of little assistance: see the *Solio case, supra.* But cases where the objection that the word was descriptive were overruled are frequently cited. See cases collected in Sebastian, p. 54, and especially *Bovril Co.'s T. M.* (1896), 13 R. P. C. 382 (Bovril), and *Burroughs, Wellcome & Co.'s T. M.* (1904), 22 R. P. C. 164 (Tabloid). See also *Chesebrough Co.'s T. M.* (1902), 19 R. P. C. 342 (Vaseline).

(*e*) "A word or words having no direct reference to the character or quality of the goods." The word "direct" did not appear in the corresponding sect. 10 of the Act of 1888, and consequently decisions refusing registration under that Act must be reconsidered: *e.g., Printing Machinery Co.'s Appn.* (1905), 23 R. P. C. 38. On the other hand, cases in which it was held that there was no reference are *a* Sect. 9 (4).

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fortiori authorities that there was no *direct* reference: *e.g.*, *Pinto* v. *Badman* (1891), 8 R. P. C. 181 (El Destino, for cigars, does not suggest that the goods are foreign); *Densham's T. M.* (1895), 12 R. P. C. 271 (Mazawattee, for tea); *Holt's T. M.* (1896), 13 R. P. C. 118 (Trilby, for millinery); *Kynoch's T. M.* (1897), 14 R. P. C. 905 (Kynite, for explosives); *Eastman & Co.'s T. M.* (1898), 15 R. P. C. 476 (Solio, for printing paper); *Kodak* v. *London Stereoscopic Co.* (1903), 20 R. P. C. 337 (Brownie, Bullseye, Kodak, for films); *Ellis & Co.'s Appn.* (1904), 21 R. P. C. 617 (Quaker, for fermented liquors). For a list of cases in which the descriptive character of a word has been discussed, see Sebastian, pp. 76 and 77.

The question whether a word has a direct reference to the character or quality of the goods may depend upon all the circumstances of its user, since these may affect its meaning. Thus the word "National" was allowed in the case of a cash register company whose machines had been known under that name for years, and has been allowed by the Registrar in other cases, but was refused by him for seeds and for hollow ware, his decision in the latter case being upheld by the Court as a proper exercise of his discretion, Astbury, J., pointing out that as applied, for example, to flags, the word would be clearly descriptive: *National Cash Register Co.'s Appn.* (1917), 34 R. P. C. 273, 354; *National Galvanizers, Ltd.'s Appn.* (1920), 37 R. P. C. 202, p. 216. Cf. *Colgate's Appn.* (1913), 30 R. P. C. 262 (Ribbon, refused for a dentifrice sold in tubes from which it was squeezed as a ribbon). "Standard" was considered merely descriptive in *Standard Ideal Co.* v. *Standard Manufacturing Co.* (1912), 27 R. P. C. 789. The name used to describe an article without reference to origin cannot be registered under this subsection: see cases cited in the last note, and *De Maid's Appn.* (1914), 31 R. P. C. 305; nor a mere laudatory epithet: *Massachusetts Saw Works' Appn.* (1918), 35 R. P. C. 137, p. 146; and see cases cited on p. 54. The following further cases, decided under the Act of 1905, may be referred to: *Compagnie Industrielle des Petroles' Appn.* (1907), 24 R. P. C. 585 (Motorine, registration upheld for lubricants); *Société le Ferment's Appn.* (1912), 29 R. P. C. 497, p. 504 (Lactobacilline, considered to have no reference to alimentary goods, &c.); *Lindstroem's Appn.* (1914), 31 R. P. C. 261 (Parlograph, allowed for talking machines).

As to cases on "fancy words" relevant to the question of descriptiveness of the goods, see end of note (*d*).

(*f*) "Not being in its ordinary signification a geographical name or a surname." The words "according to its ordinary signification" and "or a surname" were introduced by the Act of 1905. Decisions refusing names as geographical under the former Act may therefore require reconsideration: *e.g.*, *Salt & Co.'s Appn.* (1894), 11 R. P. C. 517 (Eboline); but even under the old Act, where the geographical signification was in the nature of an accidental coincidence, registration was allowed: *Magnolia Metal Co.'s T. Ms.* (1897), 14 R. P. C. 265, 621; *Densham's T. M.* (1895), 12 R. P. C. 75, 271 (Mazawattee). For decisions under the Act of 1905, see *Brock* v. *Pain* (1912), 28 R. P. C. 461, 697 (Crystal Palace, for fireworks, upheld); *Standard Woven Fabric's Co.'s Appn.* (1918), 35 R. P. C. 53 (Stan-

wal, allowed). It should be noted that geographical names and surnames may be registered in proper cases under sub-sect. 5: see pp. 53, 54. Sect. 9 (4).

As to geographical names appearing on a label registrable now under sub-sect. (5), see *Clement et Cie.'s T. M.* (1900), 16 R. P. C. 173, 611 (St. Raphael).

(*g*) *Old marks.*—This proviso is a more liberal form of similar savings in earlier Acts for trade marks used as such before registration was introduced. The extension which permits registration "either in its original form or with additions or alterations not substantially affecting the identity of the same" removes difficulties which previously led to the refusal of many applications. The period which has elapsed since 1875, and the more liberal provisions of the Act of 1905 as to the registrability of new marks, reduces the importance of this proviso. Some of the cases decided under the old Acts, though the corresponding provision is different, may be referred to as interpreting the phrase "user as a trade mark" and "user" where that word has the same meaning. The material point in considering whether a mark has been used as a trade mark is not so much the intention of the trader as the effect upon the public: *Richards* v. *Butcher* (No. 2) (1891), 8 R. P. C. 249; *Powell's T. M.*, 10 R. P. C. 195; 11 R. P. C. 4. User as a merely descriptive term is not user as a trade mark: see *Leonard & Ellis' T. M.* (1884), 26 Ch. D. 288, and pp. 20 and 54, *supra*. The fact that another trade mark is used in association with the mark claimed to be used as a trade mark may be of importance in considering whether the latter is really a trade mark or a description: *Williams' Appn.* (1917), 34 R. P. C. p. 203; but it is by no means conclusive, as the association of a general "house" mark with other marks for special classes of goods is a common practice: *Andrew* v. *Kuehnrich* (1913), 30 R. P. C. pp. 695, 697. Nor does the addition of a trader's name to a word mark negative the conclusion that the latter is a true trade mark: *Imperial Tobacco Co.* v. *De Pasquali* (1918), 35 R. P. C. p. 208, though such use may be a material consideration: *Horlick's Malted Milk Co.* v. *Summerskill* (1917), 34 R. P. C. 63; *Perry Davis* v. *Harbord* (1890), 7 R. P. C. 336. Sect. 9, Proviso.

Where old user is necessary, the user must have been user in the United Kingdom: *Meeus' Appn.* (1891), 8 R. P. C. 25; and cf. *Neuchatel Co.'s Appn.* (1913), 30 R. P. C. 349; and although it may be sufficient if the user has been for the purpose of sales abroad, the mark must have been applied for the purpose of distinguishing the applicant's goods and not those of the consignee abroad. See *New Atlas Co.'s T. M.* (1918), 35 R. P. C. at p. 275, and note (*e*), p. 46. Sales in the United Kingdom by third parties may be sufficient to establish the reputation of a foreign manufacturer: *Panhard* v. *Panhard* (1901), 18 R. P. C. 405; *Poiret* v. *Poiret* (1920), 37 R. P. C. p. 187. As to the importance of user abroad on the question whether a mark is "adapted to distinguish," see p. 51.

10. A trade mark may be limited in whole or in part to one or more specified colours, and in such case the fact that it is so limited shall be taken into consideration by any tribunal having Coloured trade marks.

to decide on the distinctive character of such trade mark. If and so far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

This provision was new in 1905, the previously existing provision as to colour being found in sect. 67 of the Act of 1883, as amended by sect. 11 of the Act of 1888. Colour may now be an element sufficient to render distinctive a mark which would previously have been refused, as in *Hanson's Appn.* (1887), 37 Ch. D. 112: see *Reddaway's Appn.* (1914), 31 R. P. C. 147. When a trade mark contains matter which, irrespective of colour, is distinctive, it is obviously inadvisable to limit the registration to a particular colour, as this might leave it open to a rival to imitate the mark in a different colour. Limitation to particular colours or exclusion of one colour may also be imposed under sect. 12 as amended (*q.v.*) as a condition of allowing registration: *Reddaway's Appn., supra; Re Jeffrey & Co.* and *Re Johnson Philpott & Co.*, Seb. p. 602.

It is evident that colour may be a material element in considering the degree of resemblance between two marks. See *Worthington's Appn.* (1880), 14 Ch. D. 8; *Re Robinson*, 29 W. R. 31; *Mitchell* v. *Henry* (1880), 15 Ch. D. 181; *Texas Co.'s Appn.* (1914), 31 R. P. C. 53. It is, therefore, necessary to consider the possible effect of colour upon a question of resemblance under sects. 11 or 19: *Société des Verreries' T. M.* (1894), 10 R. P. C. 436; 11 R. P. C. 142.

Restriction on registration.

11. It shall not be lawful to register as a trade mark or part of a trade mark any matter, the use of which would by reason of its being calculated to deceive or otherwise be disentitled to protection in a court of justice, or would be contrary to law or morality, or any scandalous design.

This section is derived from sects. 73 and 86 of the Act of 1883.

It has been held that this section is in the nature of a proviso to sect. 9, so that the words "disentitled to protection" involve some positive objection to the mark other than the mere fact that it did not include any of the essential particulars required by sect. 9: *Imperial Tobacco Co.* v. *De Pasquali* (1918), 35 R. P. C. 185, overruling *Wigfull* v. *Jackson* (1916), 33 R. P. C. 97. In considering the section as a ground for removing a mark already registered, as distinguished from a ground for objection prior to registration, it may become material to consider the time at which its effect is to be taken into account, particularly having regard to the reference to this section contained in sect. 41. See the last cited case and observations therein on *Woodward* v. *Boulton Macro.* (1915), 32 R. P. C. 173, and notes, p. 85, *post.*

On applications for registration the onus of proving that a trade mark is not calculated to deceive is on the applicant: *Eno* v. *Dunn* (1890), 15 A. C. 252; 7 R. P. C. 311; and in doubtful cases the discretion of the Registrar and of the Court is exercised against the applicant, especially in the case of new marks: see, for example, *Sandow's Appn.* (1914), 31 R. P. C.

196; *United Kingdom Tobacco Co.'s Appn.* (1915), 29 R. P. C. 489. The existence of similar marks used by other traders, whether registered or not, is a common ground for refusal under this section or sect. 19 (*q.v.*): see *Albert Baker & Co.'s Appn.* (1908), 25 R. P. C. 513; as to the length of user relied upon by other traders, see *Kenrick & Jefferson's Appn.* (1909), 26 R. P. C. 641, and *Southall & Barclay's Appn.* (1911), 28 R. P. C. 481. Subject to what has been said above as to the onus of proof, the degree of similarity which will lead to the refusal of a mark is a question of fact to be decided in each case by reference to considerations similar to those relevant to an action for infringement or passing off by the use of a mark (see p. 28), the description of goods, the class of customer, the practice of the trade, the appearance of the mark in actual use, all being material: see, for example, *Crook's T. M.* (1914), 31 R. P. C. 79; *Brown Co.'s Appn.* (1921), 38 R. P. C. 15; *Currie's Appn.* (1896), 13 R. P. C. 681; *Farrow's Appn.* (1890), 7 R. P. C. 260; *Rosing's Appn.* (1878), 54 L. J. Ch. 975; and notes to sects. 10 and 19.

If the applicant's mark has been in use for some time, even if only in a foreign country, it will receive more favourable consideration, as no suspicion will attach to the application: *Soc. Dubonnet's Appn.* (1915), 32 R. P. C. 241. On the other hand, the probability of deception in a foreign country may be material if there is reason to suspect fraudulent intention on the part of the applicant, but a mark ought not to be refused where the only objection is that the mark, if used abroad, might possibly deceive some foreigners: contrast *Dewhurst's Appn.* (1896), 13 R. P. C. 288, and *Soc. des Verreries' Appn.* (1894), 11 R. P. C. 142, with *Bagots, Hutton & Co.'s Appn.* (1916), 33 R. P. C. 357, and *Soc. Dubonnet's Appn., supra.* Such possibility may now be avoided by imposing a geographical limitation under sect. 12.

The probability of deception must be serious and not merely fanciful: *Bass' T. M.* (1902), 19 R. P. C. 529, at p. 544; *Angus Watson's Appn.* (1911), 28 R. P. C. 313; *Sunbeam Co.'s Appn.* (1916), 33 R. P. C. p. 398. On the other hand, the Registrar is not bound to surrender his opinion that deception is probable because the owner of a similar mark consents to the application: *Dewhurst's Appn., supra.* The public, as well as any individual opponent, must be considered: *Havana Commercial Co.'s Appn.* (1916), 33 R. P. C. 399.

Apart from similarity to an existing mark, there are many other grounds upon which a question as to whether a mark is calculated to deceive may arise: statements or suggestions as to origin: *Kutnow's Appn.* (1893), 10 R. P. C. 401; *McGlennon's Appn.* (1912), 25 R. P. C. 797; *Royal Worcester Corset Co.'s Appn.* (1909), 26 R. P. C. 185; *Van de Leeuw's Appn.* (1912), 28 R. P. C. 708; or as to Royal patronage: *Royal Worcester Corset Co.'s Appn., supra; Royal Baking Powder Co.'s Appn.* (1902), 19 R. P. C. 261; *Imperial Tobacco Co.'s T. M.* (1915), 32 R. P. C. 361 (and see App. D., rule 12); a suggested claim to monopoly: *Hayward's T. Ms.* (1885), 54 L. J. Ch. 1003; *Smokeless Powder Co.'s Appn.* (1892), 9 R. P. C. 109; *Apollinaris Co.'s T. M.* (1891), 8 R. P. C. p. 163; registration by a servant or other party not the true

proprietor: *Ex parte Lawrence Bros.* (1878), 44 L. T. 98; *Jones' T. M.* (1885), 53 L. T. 1; *Thorne* v. *Pimms* (1909), 26 R. P. C. 221; *Casson's T. M.* (1910), 27 R. P. C. 65; *New Atlas Co.'s T. M.* (1918), 35 R. P. C. 269; *Walker & Sons, Ltd.* v. *Kego* (No. 1) (1921), 38 R. P. C. 25; false name and address: *Hill's T. M.* (1893), 10 R. P. C. 113; previous association of the mark with false statements: *Wood* v. *Butler* (1885), 3 R. P. C. p. 88; *Fuente's Appn.* (1891), 8 R. P. C. 214; but see *Cohen's T. M.* (1922), 39 R. P. C. 33; *Paterson* v. *Kit Coffee Co.* (1910), 27 R. P. C. 594; use of words suggesting a false claim as to what is the trade mark or to registration: *Apollinaris Co.'s T. M.* (1891), 8 R. P. C. p. 164; *Wills' T. M.* (1893), 10 R. P. C. 269; *Hammond* v. *Malcolm, Brunker & Co.* (1892), 9 R. P. C. 301; *Lyle & Kinahan's Appn.* (1907), 24 R. P. C. p. 260; *Bass, &c.'s T. M., supra; Massachusetts Saw Works' Appn.* (1918), 35 R. P. C. p. 145; and see sect. 67. As to the use of the word "patent," see Rule 11 and p. 34, *ante*.

The registration as a trade mark of a word which is in truth only the name of the article may perhaps be deceptive within the section: see *Palmer's T. M.*, 21 Ch. D. p. 58; *Philippart* v. *Whiteley, Ltd.* (1908), 25 R. P. C. 565; and there would no doubt be deception if the mark had a descriptive meaning and the article did not answer the description: *Edge's T. M.* (1891), 8 R. P. C. 207; *Walker & Sons, Ltd.* v. *Kego* (No. 2) (1921), 38 R. P. C. 31; and cf. *Crosfield's Appn.*, (1910) 1 Ch. 130, at pp. 142, 150; 26 R. P. C. 837. The possibility that registration of a mark containing elements which are common to the trade might be deceptive by leading to the belief that one or more of such elements alone was protected by the registration may be avoided by requiring a disclaimer: *e.g.*, *Diamond T. Motor Co.'s Appn.* (1921), 38 R. P. C. 373.

Registration of Trade Marks.

Application for registration.

*12.—(1) Any person claiming to be the proprietor of a trade mark who is desirous of registering the same must apply in writing to the Registrar in the prescribed manner (*a*).

(2) Subject to the provisions of this Act the Registrar may (*b*) refuse such application, or may accept it absolutely or subject to conditions, amendments, or modifications, [or to such limitations, if any, as to mode or place of user or otherwise, as he may think right to impose] (*c*).

(3) In case of any such refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving at the same, and such decision shall be subject to appeal to the Board of Trade or to the Court at the option of the applicant.

(4) An appeal under this section shall be made in the prescribed manner (*d*), and on such appeal the Board of Trade or the Court, as the case may be, shall, if required, hear the applicant and the Registrar, and shall make an order determining whether, and

subject to what conditions, amendments, or modifications, if any [or to what limitations, if any, as to mode or place of user or otherwise,] the application is to be accepted.

(5) Appeals under this section shall be heard on the materials so stated by the Registrar to have been used by him in arriving at his decision, and no further grounds of objection to the acceptance of the application shall be allowed to be taken by the Registrar, other than those stated by him, except by leave of the tribunal hearing the appeal (*e*). Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of costs on giving notice as prescribed.

(6) The Registrar or the Board of Trade or the Court, as the case may be, may at any time, whether before or after acceptance, correct any error in or in connexion with the application, or may permit the applicant to amend his application upon such terms as they may think fit.

This section is derived from sect. 62 of the Act of 1883, as amended by sect. 8 of the Act of 1888. The words in brackets were introduced by sect. 12 of the Act of 1919.

(*a*) See Rules 16 *et seq.*; and as to special trade marks under sect. 62, Rules 36 *et seq.*; applications to the Cutlers' Co., Rules 104 *et seq.*; applications for cotton marks, Rules 110 *et seq.* Printed instructions to applicants may be obtained from the Patent Office.

As to what is a trade mark, see p. 45; and as to who may claim to be the proprietor, see p. 46.

(*b*) A further alternative, viz., that of registering the mark in Part B., has been added by sect. 5 of the Act of 1919.

As to rules in relation to the Registrar's discretion, see Rules 78—81, and Rules 11—15 as to cases there specified.

The question as to how far the word "may" imports a discretion on the part of the Registrar has been much discussed. In any case, it is now expressly provided that the Court, on appeal, has and must exercise the same discretion: Trade Marks Act, 1919, s. 8 (2); *National Galvanizers' Appn.* (1920), 37 R. P. C. 202; *Diamond T. Motor Co.'s Appn.* (1921), 38 R. P. C. 373. Such discretion as exists can only be exercised in accordance with principles to be deduced from the Act itself: *Eno* v. *Dunn* (1890), 7 R. P. C. 311; *Du Cros' Appn.* (1913), 30 R. P. C. 660, and cannot be made a ground for refusing a mark where the applicants will not accept a condition which the Act does not authorise the Registrar to impose: *B. S. A. Co.'s Appn.* (1907), 24 R. P. C. 563. A formula, at one time adopted by the Registrar, "for these reasons, and also in the exercise of my discretion, the application is refused," has been disapproved: see *National Cash Register Co.'s Appn.* (1917), 34 R. P. C. p. 281, affirmed p. 354. Cf. *Standard Woven Fabric Co.'s Appn.* (1918), 35 R. P. C. 55, 58, which clearly states that the object of the register

is to enable trade marks to be put upon it; and see the references to official practice in *Cadbury's Appn.* (1915), 32 R. P. C. p. 462. *Garrett's Appn.* (1916), 33 R. P. C. 117, in which the mark "Ogee," though within the literal words of sect. 9 (4), was refused as being in substance only the letters O. G., which would in the circumstances have been refused under sect. 9 (5), must be regarded as an exceptional case.

Failure by the applicant to comply with the provisions of another statute, unless amounting to a deliberate defiance of the law, is not a ground for refusing registration: *Mann's Appn.* (1919), 36 R. P. C. 189; *Albert Baker & Co.'s Appn.* (1908), 25 R. P. C. 513.

(*c*) Under this sub-section, a condition as to mode of user may be imposed which is necessary to ensure that the mark as used in practice will be distinctive: *Reddaway's Appn.* (1914), 31 R. P. C. 147. The decisions in *Dewhurst's Appn.* (1896), 13 R. P. C. 288, and *Crispin's Appn.* (1917), 34 R. P. C. 249, 349, are no longer authoritative in view of the words added to the section by the Act of 1919. In *Apollinaris Co.'s Appn.* (1907), 24 R. P. C. 436, an undertaking as to the goods to which the mark should be applied was required to prevent the mark from becoming deceptive. See also Rule 15.

(*d*) As to appeals to the Court, see Rule 122; and appeals to the Board of Trade, Rules 123 *et seq.*; and as to withdrawal of an appeal, Rule 129. As to practice on appeals generally, see p. 67, *post*. The Board of Trade has power to refer an appeal to the Court: sect. 59.

A refusal by the Board of Trade on appeal is final; an appeal to the Court is subject to further appeal in the usual way. A decision at this preliminary stage, before advertisement, is open to reconsideration in subsequent proceedings upon an opposition: *Neuchatel Co.'s Appn.* (1913), 30 R. P. C. p. 355.

(*e*) As the Registrar cannot be ordered to pay costs in the case of an appeal being successful, leave to file further evidence is readily given and may materially affect the case: *e.g.*, *British Thomson-Houston Co.'s Appn.* (1917), 34 R. P. C. 169.

Where the application has been refused by the Registrar, before advertisement, on account of similarity to another registered mark, it is convenient that the owner of such mark should be served, so that he may appear to oppose if he wishes: *Royal Worcester Corset Co.'s Appn.* (1909), 26 R. P. C. 185. See also *Shamrock & Co.'s Appn.* (1907), 24 R. P. C. 569; *Carborundum Co.'s Appn.* (1909), 26 R. P. C. 504; *Itala Fabbrica's Appn.* (1910), 27 R. P. C. 493; *Neuchatel Co.'s Appn.* (1913), 30 R. P. C. 349; and cases under the previous Acts cited Seb. p. 374. In the *Royal Worcester case*, a party served with notice of a special application under sect. 9 (5) obtained an order for security for costs against the applicants, a foreign corporation: Seb. p. 376.

Advertisement of application.

13. When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions [and limitations], the Registrar shall, as soon as may be after such acceptance, cause the application as accepted to be advertised in the prescribed manner. Such advertisement shall set forth all

conditions [and limitations] subject to which the application has been accepted. [Provided that an application under the provisions of subsection (5) of section 9 of this Act may be advertised by the Registrar on receipt of such application and before acceptance.]

This section is derived, with modifications, from sect. 68 of the Act of 1883, as amended by sect. 12 of the Act of 1888. The words in brackets were introduced by sect. 12 of the Act of 1919.

As to advertisement, see Rules 41—44.

The proviso, taken in conjunction with the amendment to sect. 9 (5), enables the Registrar to defer any decision as to whether a mark tendered for registration under sect. 9 (5) is distinctive or is open to objection under sects. 11 or 19 until any opposition raised by third parties after advertisement is heard. A preliminary decision upon evidence which may be incomplete can thus be avoided.

Opposition to registration.

14.—(1) Any person may, within the prescribed time from the date of the advertisement of an application for the registration of a trade mark, give notice to the Registrar of opposition to such registration (*a*).

(2) Such notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition (*b*).

(3) The Registrar shall send a copy of such notice to the applicant, and within the prescribed time after the receipt of such notice, the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

(4) If the applicant sends such counter-statement, the Registrar shall furnish a copy thereof to the persons giving notice of opposition, and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions [or what limitations as to mode or place of user or otherwise], registration is to be permitted.

(5) The decision of the Registrar shall be subject to appeal to the Court *or, with the consent of the parties, to the Board of Trade.*

(6) An appeal under this section shall be made in the prescribed manner (*c*), and on such appeal *the Board of Trade or* the Court, *as the case may be*, shall, if required, hear the parties and the Registrar, and shall make an order determining whether, and subject to what conditions, if any [or what limitations, if any,

as to mode or place of user or otherwise], registration is to be permitted (*d*).

(7) On the hearing of any such appeal any party may either in the manner prescribed or by special leave of the tribunal bring forward further material for the consideration of the tribunal (*e*).

(8) In proceedings under this section no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the opponent or the Registrar other than those stated by the opponent as herein-above provided except by leave of the tribunal hearing the appeal. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of the costs of the opponent on giving notice as prescribed (*f*).

*(9) In any appeal under this section, the tribunal may, after hearing the Registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity of such trade mark, but in such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.

(10) *The Registrar, or in the case of an appeal to the Board of Trade the Board of Trade, shall have power in proceedings under this section to award to any party such costs as they may consider reasonable, and to direct how and by what parties they are to be paid.*

(11) If a party giving notice of opposition or of appeal neither resides nor carries on business in the United Kingdom, the tribunal may require such party to give security for costs of the proceedings before it relative to such opposition or appeal, and in default of such security being duly given may treat the opposition or appeal as abandoned.

This section is founded on sect. 69 of the Act of 1883, as amended by sect. 13 of the Act of 1888. The words in brackets were introduced, and the words in italics repealed, by sect. 12 of the Act of 1919, the repeal being consequential upon sect. 8 of the latter Act. Sub-sect. 10, relating to costs, was repealed by the same section, and the existing provision as to costs is contained in sect. 10 of the Act of 1919.

Sub-sect. 9 does not apply to marks registered in Part B.

It will be observed that the appeal which used to lie to the Board of Trade against a decision given on an opposition is now abolished, though an appeal against a preliminary refusal by the Registrar under sect. 12 may still be made to the Board of Trade.

(*a*) As to procedure in case of opposition, see Rules 45—56. As to evidence, see sect. 49.

(*b*) There is no express limitation requiring opponents to be "persons aggrieved," or as to the grounds upon which an application may be opposed, but oppositions are usually based upon some objection to the registrability of the mark contained in the provisions of the statute itself. Objections based on the failure to comply with some other Act will not prevail, except perhaps in the case of a trade carried on in deliberate defiance of such Act: see *Albert Baker & Co.'s Appn.* (1908), 25 R. P. C. 513; *Mann's Appn.* (1919), 36 R. P. C. 189.

(*c*) See Rules 122 and 129. The appeal is by motion; on the day named in the notice of motion directions are generally given for the motion to be placed in the witness or non-witness list, as may be appropriate, and leave should then be applied for, if desired, to file further evidence: *e.g.*, *Ogston & Tennant's Appn.* (1909), 26 R. P. C. 816. In *Waide's Appn.* (1916), 33 R. P. C. 320, discovery and cross-examination was applied for, but, in the circumstances, refused.

(*d*) In *Crispin's Appn.* (1917), 34 R. P. C. 249, 349, where the Registrar had imposed a limitation which, under the then existing law, was held by the Court to be beyond his jurisdiction, the opponents were given leave to appeal against registration without the limitation.

(*e*) See *Ogston & Tennant's Appn.*, *supra*.

(*f*) Where a particular ground of objection not mentioned in the notice of opposition was known to the opponents at the hearing before the Registrar, but no application was made to him to amend the notice, leave to amend on appeal was refused: *Kenrick & Jefferson's Appn.* (1909), 26 R. P. C. 641. In *Albert Baker & Co.'s Appn.* (1908), 25 R. P. C. 513, at 516, further grounds of objection were allowed. Before the hearing by the Registrar, he may give leave to amend (Rule 96), and in *Moët's T. M.* (1890), 7 R. P. C. 226, he was ordered by mandamus to give such leave.

As to how far a decision of the Registrar, against which there has been no appeal, amounts to a case of *res judicata*, see *Hunt's Appn.* (1911), 28 R. P. C. 303; *Massachusetts Saw Works' Appn.* (1918), 35 R. P. C. 137; and sect. 54, *post*.

Disclaimers.

*15. If a trade mark contains parts not separately registered by the proprietor as trade marks, or if it contains matter common to the trade or otherwise of a non-distinctive character, the Registrar or the Board of Trade or the Court, in deciding whether such trade mark shall be entered or shall remain upon the register, may require, as a condition of its being upon the register, that the proprietor shall disclaim any right to the exclusive use of any part or parts of such trade mark, or of all or any portion of such matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as

they may consider needful for the purpose of defining his rights under such registration: Provided always that no disclaimer upon the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

This section effects important modifications in the previous law as to disclaimers contained in sects. 64 and 74 of the Act of 1883, as altered by sects. 10 and 16 of the Act of 1888.

A disclaimer in no way affects any common law remedy available in an action for passing off: see *Bayer* v. *Baird* (1898), 15 R. P. C. 615, and sect. 45; nor will it prevent any subsequent acquisition of the right to registration without a disclaimer: see *Willys-Overland Co.'s Appn.* (1920), 37 R. P. C. 244, p. 246. The effect of a disclaimer on the statutory rights is not very clear. On an application to register, Parker, J., held that an opponent, the registered proprietor of "Repellus," with a disclaimer of "Repel," was not prejudiced by the disclaimer in his opposition to a fancy variation, "Aquarepela": *Wilks' Appn.* (1912), 29 R. P. C. 21; but in *Coombe* v. *Mendit* (1913), 30 R. P. C. 709, Eve, J., appears to have considered that a disclaimer of "Mend" by the registered proprietor of "Mendine" materially affected the issue on alleged infringement by "Mendit."

The real reason for requiring a disclaimer is to prevent a misconception which might lead people to suppose that a part of a mark, which was in fact common to the trade, was the monopoly of one trader. Disclaimers are, however, generally unsatisfactory, as they may operate as an encouragement to unscrupulous traders to imitate an existing mark, and they should not be insisted upon unless really necessary for the protection of innocent traders: *Albert Baker & Co.'s Appn.* (1908), 25 R. P. C. 513; *Cadbury's Appn.* (No. 2), 32 R. P. C. 456.

Cases decided before the Act of 1905 are not of much assistance in construing the present section, but as to what ought to be considered as a part of a mark, reference may be made to *Clement et Cie.'s T. M.* (1900), 16 R. P. C. 173, 611; and it may reasonably be supposed that the old rule in regard to names which form part of a distinctive label will be adhered to: see *Colman's Appn.* (1894), 11 R. P. C. 129. Cases in which applicants anxious to secure registration have consented to a disclaimer without argument should not be regarded as precedents for requiring disclaimers in other cases.

In some cases it may be possible to avoid the necessity for a disclaimer of a distinctive part by obtaining registration of that part as an associated mark under sect. 25.

As to the principles on which the Registrar's discretion should be exercised, see, generally, note (*b*), p. 63. The discretion vested in the Registrar by sect. 12 (2) must be regarded, so far as disclaimers are concerned, as restricted by the terms of sect. 15. Cf. *B. S. A. Co.'s Appn.* (1907), 24 R. P. C. 563, as to association.

Date of registration.

16. When an application for registration of a trade mark has been accepted and has not been opposed, and the time for notice

of opposition has expired, or having been opposed the opposition has been decided in favour of the applicant, the Registrar shall, [unless the mark has been accepted in error or] unless the Board of Trade otherwise direct, register the said trade mark, and the trade mark, when registered, shall be registered as of the date of the application for registration, and such date shall be deemed for the purposes of this Act to be the date of registration.

The latter part of this section comes from sect. 17 of the Act of 1888. The words in brackets were inserted by sect. 12 of the Act of 1919. See Rules 58—61.

Certificate of registration.

17. On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration of such trade mark under the hand of the Registrar, and sealed with the seal of the Patent Office.

This section was new in 1905. As to the form, see Rule 61. A certificate required under sect. 51 to prove that a party is at the time the registered proprietor, for use in legal proceedings or for other purposes, is issued on payment of a fee. See Rules 99 to 101.

Non-completion of registration.

18. Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice of the non-completion to the applicant in writing in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in such notice.

This section comes from sect. 63 of the Act of 1883, as amended by the Act of 1888. The mere abandonment of an application does not prevent a fresh application to register: *Loftus' Appn.* (1894), 11 R. P. C. 29; but as to cases where there is an opponent, see note (*f*), p. 67. As to the prescribed notices, see Rule 57.

Identical Trade Marks.

Identical marks.

19. Except by order of the Court (*a*) or in the case of trade marks in use (*b*) before the thirteenth day of August one thousand eight hundred and seventy-five, no trade mark shall be registered in respect of any goods or description of goods which is identical with one belonging to a different proprietor which is already on the register with respect to such goods or description of goods, or so nearly resembling such a trade mark as to be calculated to deceive (*c*).

This section is a modified form of sect. 72 of the Act of 1883, as amended by sect. 12 of the Act of 1888.

The introduction of the words "belonging to a different proprietor" makes the decision in *Player's Appn.* (1901), 18 R. P. C. 65, obsolete, provision for similar marks belonging to a single proprietor being contained in sect. 24.

This section applies also to marks registered in Part B., and the register includes both parts.

(*a*) See sect. 21: it should be observed that in this section no amendment has been made corresponding to that made in sect. 21 by the Act of 1919.

(*b*) "In use" in this context will no doubt be construed as meaning "in use as a trade mark in this country": see p. 59.

(*c*) "Calculated to deceive" does not necessarily import any design to deceive: *Lyndon's T. M.* (1886), 3 R. P. C. 102. As to the comparison between this section and sect. 11, see per Sargant, J., in *Maeder's T. M.* (1916), 33 R. P. C. 77. It should also be noted that this section, unlike sect. 11, is limited to the particular case of another mark registered for the same description of goods.

In considering whether a mark is calculated to deceive by reason of its similarity to a registered mark, the onus of proving that it is not so calculated is on the applicant: see pp. 60, 61. Subject to this, the tests to be applied are similar to those applicable to cases of infringement: see pp. 28, 29.

Goods of the same description.—This expression must not be confused with the classes for which marks must be registered: *Gutta Percha Co.'s Appn.* (1909), 26 R. P. C. 428. In considering whether different goods are, nevertheless, of the same description, all the circumstances of the trade must be considered, the use to which the goods are put and the probability of their being sold in the same shop or department. See, for example, *Australian Wine Importers' T. M.* (1889), 6 R. P. C. 311; *Turney's Appn.* (1894), 11 R. P. C. 37; *Pianotist Co.'s Appn.* (1906), 23 R. P. C. 774; *Lake & Elliott's Appn.* (1903), 20 R. P. C. 605; *Leiner's Appn., ibid.* p. 253; *B. S. A. Co.'s Appn.* (1907), 24 R. P. C. 563; *Cie. Industrielle des Petroles' Appn., ibid.* p. 585; *Gutta Percha Co.'s Appn., supra; British Drug Houses' T. M.* (1913), 30 R. P. C. 73; *Shreeve's T. M.* (1910), 31 R. P. C. 24; *Sunbeam Co.'s Appn.* (1916), 33 R. P. C. 389; *Egg Products Ltd.'s Appn.* (1922), 39 R. P. C. 155.

Rival claims to identical marks.

20. Where each of several persons claims to be proprietor of the same trade mark, or of nearly identical trade marks in respect of the same goods or description of goods, and to be registered as such proprietor, the Registrar may refuse to register any of them until their rights have been determined by the Court (*a*), or have been settled by agreement (*b*) in a manner approved by him or (on appeal) by the Board of Trade.

This section is derived from sect. 71 of the Act of 1883.

(*a*) One form of procedure for determining the rights is for one applicant to apply to the Court by notice of motion, serving the

Registrar and the rival applicant: see *De Maid's Appn.* (1914), 31 R. P. C. 305; or the rights may be determined on appeals by both applicants from the Registrar's refusal to proceed: *Javal & Parquet's Appn.* (1912), 29 R. P. C. 627.

The section applies only where there are simultaneous applications to register and not where one mark is already on the register: *Roskill's T. M.* (1915), 32 R. P. C. 577.

Other cases in which the rights have been determined by the Court are: *Hudson's Appn.* (1907), 24 R. P. C. 582; *Albert Baker & Co.'s Appn.* (1908), 25 R. P. C. 513. Cases decided under sect. 21 also illustrate circumstances under which two parties may be registered as proprietors of resembling marks. Cf. also *Re Tarantella* (1910), 27 R. P. C. 573, 762.

(*b*) Provision for agreement was introduced by the Act of 1905, and may meet cases of dissolution of partnership, such as *Ehrmann's T. Ms.* (1897), 14 R. P. C. 665, but such agreements will no doubt only be sanctioned where there is no risk of serious deception of the public: *Jones' T. M.* (1885), 53 L. T. N. S. 1.

Concurrent user.

21. In case of honest concurrent user (*a*) or of other special circumstances which, in the opinion of the Court [or Registrar], make it proper so to do, the Court [or Registrar] may (*b*) permit the registration of the same trade mark, or of nearly identical trade marks, for the same goods or description of goods by more than one proprietor subject to such conditions and limitations, if any, as to mode or place of user or otherwise, as *it* [the Court or the Registrar, as the case may be,] may think it right to impose (*c*).

This was a new section in 1905. Sect. 74 of the Act of 1883 contained a provision permitting the registration of similar *old* marks by three, but not more, different proprietors.

The words in brackets were introduced by sect. 12 of the Act of 1919. As no corresponding amendment is made in sect. 19 of the Act of 1905, it is questionable whether the amendment does more than remove any doubts as to the power of the Registrar to deal with simultaneous applications to register: see *Roskill's T. M.* (1915), 32 R. P. C. 577, on the position before the amendment.

(*a*) The concurrent user must be user in this country as a trade mark: *Massachusetts Saw Works' Appn.* (1918), 35 R. P. C. 137; *Hoemoulle's T. M.* (1911), 28 R. P. C. 249. As to what is user as a trade mark, see p. 59.

Recent user by the applicant with the knowledge of the existence of a similar registered mark, though without any dishonest intention, will not be sufficient to induce the Court to exercise its discretion in favour of the applicant: *Massachusetts Saw Works' Appn., supra*; cf. *Cohen* v. *Fidler* (1916), 33 R. P. C. 129, where the user was held not to be honest.

(*b*) Under this section the Court may permit registration of a mark even if there is some possibility of confusion: *Maeder's T. M.* (1916), 33 R. P. C. 77; *Lehmann's Appn.* (1918), 35 R. P. C. 92.

As to the form of order and as to costs, see last cited cases.

As examples of the exercise of the discretion, see also *Lyle & Kinahan's Appn.* (1907), 24 R. P. C. 249; *Gutta Percha Co.'s Appn.* (1909), 26 R. P. C. 428; *Roskill's T. M., supra.*

(*c*) A limitation, the effect of which is to enable the earlier registered proprietor to control the use of the applicant's mark, will not in general be allowed: see *Roskill's T. M., supra.*

The power to impose limitations as to place of user has been extended by amendments to sects. 12 and 14, introduced by sect. 12 of the Act of 1919. In some earlier decisions reasons have been given for considering such limitations as unsatisfactory: see *Soc. de Verreries' T. M.* (1894), 11 R. P. C. 142; *Dewhurst's Appn.* (1896), 13 R. P. C. 288; *Crispin's Appn.* (1917), 34 R. P. C. 249, 349; but local limitations may meet the case of a division of the goodwill in distinct areas and separate assignments as contemplated by the amended form of sect. 22.

Assignment.

Assignment and transmission of trade marks.

22. A trade mark when registered shall be assigned and transmitted only in connexion with the goodwill of the business concerned in the goods for which it has been registered (*a*) and shall be determinable with that goodwill (*b*). But nothing in this section contained shall be deemed to affect the right of the proprietor of a registered trade mark to assign the right to use the same in any British possession or protectorate or foreign country in connexion with any goods for which it is registered together with the goodwill of the business therein in such goods, [and the assignment of such right to use the same shall constitute the assignee a proprietor of a separate trade mark for the purpose of section 21 of this Act, subject to such conditions and limitations as may be imposed under that section] (*c*).

This section is derived from sect. 70 of the Act of 1883.

Other provisions in the Act of 1905 dealing with assignment are sects. 23, 27, 33 (now replaced by sect. 11 of the Act of 1919), and sect. 38.

The words in brackets were added by sect. 12 of the Act of 1919.

As to procedure, see Rules 70—76.

(*a*) The inseparable connection between trade marks and goodwill has long been recognised as fundamental, though it is sometimes lost sight of by traders: see pp. 5, 6, *ante.*

The effect of a separation of the trade mark from the goodwill is to render the registration invalid, and the trade mark is liable to removal under sect. 35: *Bowden Wire, Ltd.* v. *Bowden Brake Co., Ltd.* (1914), 31 R. P. C. 385. Cf. *Cotton* v. *Gillard* (1874), 44 L. J. Ch. 90; *Thorneloe* v. *Hill* (1894), 11 R. P. C. 61; *Oldham* v. *James* (1862), 14 Ir. Ch. 81; *Walker* v. *Kego* (No. 1) (1921), 38 R. P. C. 25; *Harness' T. M.* (1900), 17 R. P. C. 49. But where a mark has been registered in the name of a person who is really a trustee for another, the defective title can be made good by an

assignment by the trustee to the true owner, as the effect of this is to reunite the trade mark with the goodwill to which it is attached: *Wellcome's T. M.* (1886), 3 R. P. C. 76.

Where a party who is not the successor in title to the goodwill has become registered as assignee, the entry will be rectified: *Johnson's T. M.* (1909), 26 R. P. C. 195; *Rey* v. *Lecouturier* (1908), 25 R. P. C. 265; 27 R. P. C. 268.

An assignment of the goodwill of a business will pass the right to any trade marks or trade names without special mention, since their association with the business is part of the goodwill: see *Hall* v. *Barrows* (1863), 33 L. J. Ch. at p. 207; *Levy* v. *Walker* (1879), 10 Ch. D. 436; *Currie* v. *Currie* (1898), 15 R. P. C. 339; *Townsend* v. *Jarman* (1900), 17 R. P. C. 649; and cf. *Rickerby* v. *Reay* (1903), 20 R. P. C. 380. But in the absence of a special covenant an assignor may, if he can do so honestly, set up again in the same business in his own name after the assignment: *Churton* v. *Douglas* (1859), Johnson, 174; and see *Trego* v. *Hunt*, (1896) A. C. 7; but not under the old name, unless it is his personal name: *Pomeroy* v. *Scalé* (1907), 24 R. P. C. 177; and as to names generally, see p. 22, *ante*.

The right to a trade name may also pass to, and be assigned by, a trustee in bankruptcy: *Melrose, Ltd.* v. *Heddle & Co.* (1902), 4 Fraser, 1120; *Wood* v. *Hall* (1916), 33 R. P. C. 16, or a receiver for debenture holders who carries on the business: *Hart* v. *Thurber Wyland, Ltd.* (1915), 32 R. P. C. 217; but a name should not be used so as to suggest that a successor is the original trader: *Cropper* v. *Cropper* (1906), 23 R. P. C. p. 394.

(*b*) *Pink* v. *Sharwood* (1913), 30 R. P. C. 725, is an example of the determination of the goodwill of a business. There may be cases in which a trader who ceases to *manufacture* can no longer claim as his trade mark, for goods which he only *sells*, a mark which has become known as a manufacturer's mark: see *Hotpoint Co.'s Appn.* (1921), 38 R. P. C. p. 71.

(*c*) The latter part of the section provides for the increasing number of cases in which separate companies are formed to deal with the trade in different territories; but in the case of an assignee whose trade is conducted entirely abroad, the provisions of sect. 37 would have to be considered.

Berna, Ltd.'s Appn. (1915), 32 R. P. C. 113, is an example of the division of goodwill in different localities. It is also possible that where there are two distinct departments in one business, the goodwill of each department may be separable from the rest: see *Sunbeam Co.'s Appn.* (1916), 33 R. P. C. 389.

There would appear to be no reason against an assignment of the goodwill of a business with its trade marks for a limited period, provided that the provisions as to reassignment at the end of the period are such that the goodwill will be genuinely re-transferred: see *Re Avril*, cited Seb. p. 640. Special arrangements affecting goodwill were considered in *Magnolia Metal Co.'s T. Ms.* (1897), 14 R. P. C. 265, 621, and *Warwick Tyre Co.* v. *New Motor, &c. Co.* (1910), 27 R. P. C. p. 170.

For an exhaustive discussion of the subject of goodwill, see Seb. pp. 333 *et seq.*

Apportionment of marks on dissolution of partnership.

23. In any case where from any cause, whether by reason of dissolution of partnership or otherwise, a person ceases to carry on business, and the goodwill of such person does not pass to one successor but is divided, the Registrar may (*a*) (subject to the provisions of this Act as to associated trade marks) (*b*), on the application of the parties interested, permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications, if any [and to such limitations, if any, as to mode or place of user], as he may think necessary in the public interest. Any decision of the Registrar under this section shall be subject to appeal to the Board of Trade.

This section was new in 1905. The words in square brackets were added by sect. 12 of the Act of 1919. Coupled with the provision as to agreements contained in sect. 20, this section removes the hardship exemplified in *Ehrmann's T. Ms.* (1897), 14 R. P. C. 665. As to the position of partners, see *Hall* v. *Barrows* (1864), 33 L. J. Ch. 204; *Churton* v. *Douglas* (1859), 28 L. J. Ch. 841; *Scott* v. *Scott* (1867), 16 L. T. N. S. 143; *Townsend* v. *Jarman* (1900), 17 R. P. C. p. 661; and see cases in reference to a joint adventure, p. 46.

As to the procedure on applications under this section, see Rules 82—84; and as to appeals, Rules 123—128.

(*a*) As to the Registrar's discretion, see note (*b*), p. 63.

(*b*) See sects. 24—27.

Associated Trade Marks.

Associated trade marks.

***24.** If application be made for the registration of a trade mark [identical with or] so closely resembling a trade mark of the applicant already on the register for the same goods or description of goods as to be calculated to deceive or cause confusion if used by a person other than the applicant, the tribunal hearing the application may require as a condition of registration that such trade marks shall be entered on the register as associated trade marks.

The provisions in regard to association were introduced by the Act of 1905, though registration of a series as contemplated by sect. 26 was previously allowed by sect. 66 of the Act of 1883. They were rendered desirable in view of the amendment introduced by sect. 19 to meet such cases as *Player's Appn.* (1901), 18 R. P. C. 65, slight variations in a registered mark, followed by separate registration, being often required in practice either for commercial reasons or to obtain registration abroad. See Rule 59.

The words in brackets were introduced by sect. 12 of the Act of 1919, and displace the view expressed in *B. S. A. Co.'s Appn.*

(1907), 24 R. P. C. p. 567, as to marks actually identical. An identical mark might be required for registration for goods not the same as those covered by an existing limited registration, though of the same description, or even for the same goods differently regarded.

The discretion to require association can only be exercised in the case of applications for goods of the same description, and to that extent the Registrar's general discretion as to imposing conditions is restricted: *B. S. A. Co.'s Appn., supra.* For rules in connection with such discretion, see Rules 78—81.

As to what degree of similarity is calculated to deceive, see notes to sect. 11 and sect. 19, and cases on infringement, p. 28. As to the meaning of goods of the same description, see notes, p. 70.

Combined trade marks.

***25.** If the proprietor of a trade mark claims to be entitled to the exclusive use of any portion of such trade mark separately he may apply to register the same as separate trade marks (*a*). Each such separate trade mark must satisfy all the conditions and shall have all the incidents of an independent trade mark, except that when registered it and the trade mark of which it forms a part shall be deemed to be associated trade marks and shall be entered on the register as such, but the user of the whole trade mark shall for the purposes of this Act be deemed to be also a user of such registered trade marks belonging to the same proprietor as it contains (*b*).

(*a*) The ordinary case would probably be that of registration of a distinctive label containing within itself some distinctive device or word. A valid registration of such part will have the advantage of removing any doubt as to whether the copying of that part was an infringement of the rights of the proprietor of the label, and may be desirable having regard to the provisions as to disclaimers in sect. 15.

(*b*) The last paragraph of the section, coupled with the proviso to sect. 27, is useful as giving to the proprietor of a number of associated marks a reasonable freedom in selecting the mark actually to be put upon the goods without rendering other marks liable to removal under sect. 37.

Though not expressly so stated, as is the case in sect. 24, it is conceived that this section cannot operate so as to require association of a trade mark registered for one description of goods with a part of the same mark registered for a different description of goods.

Series of trade marks.

26. When a person claiming to be the proprietor of several trade marks for the same description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of—

(a) Statements of the goods for which they are respectively used or proposed to be used; or

(b) statements of number, price, quality, or names of places; or
(c) other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or
(d) colour;

seeks to register such trade marks, they may be registered as a series in one registration. All the trade marks in a series of trade marks so registered shall be deemed to be, and shall be registered as, associated trade marks.

This section is founded on sect. 66 of the Act of 1883.

As to procedure on an application for registration of a series, see Rule 27. A reduced fee is charged for the registration of marks other than the first: see item 4a in the scale of fees.

As to colour, see sect. 10 and notes.

With reference to the final provision of this section, it is to be observed that by sect. 3 of the Trade Marks Act, 1919, the section is made applicable to registrations in Part B., but on the other hand, sect. 27, which contains the essential provision which distinguishes associated marks from other marks, is not applied to registrations in Part B. This being so, the effect of association in relation to marks registered in Part B. may require consideration if the question arises.

Assignment and user of associated trade marks.

*27. Associated trade marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks. Provided that where under the provisions of this Act user of a registered trade mark is required to be proved for any purpose, the tribunal may if and so far as it shall think right accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for such user.

This section does not apply to marks registered in Part B.: see notes to sect. 26. As to assignments generally, see sects. 22, 23, 33.

It is to be observed that the proviso is not limited to the case of associated marks, and may have a material bearing on sect. 37, as user with immaterial variations will have to be taken into consideration.

Renewal of Registration.

Duration of registration.

28. The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Act.

Renewal of registration.

29. The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within

the prescribed period, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is herein termed "the expiration of the last registration."

Procedure on expiry of period of registration.

30. At the prescribed time before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor at his registered address of the date at which the existing registration will expire and the conditions as to payment of fees and otherwise upon which a renewal of such registration may be obtained, and if at the expiration of the time prescribed in that behalf such conditions have not been duly complied with, the Registrar may remove such trade mark from the register, subject to such conditions (if any) as to its restoration to the register as may be prescribed.

Status of unrenewed trade mark.

*__31.__ Where a trade mark has been removed from the register for non-payment of the fee for renewal, such trade mark shall, nevertheless, for the purpose of any application for registration during one year next after the date of such removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that there had been no bonâ fide trade user of such trade mark during the two years immediately preceding such removal.

Sects. 28—31 are derived from sect. 79 of the Act of 1883, as amended by sect. 19 of the Act of 1888.

For procedure, see Rules 62—69.

As to user of a trade mark, see note (*g*), p. 59. User of a registered trade mark with alterations or additions not substantially affecting its identity may be accepted as user of the registered mark: sect. 27.

Correction and Rectification of the Register.

Correction of register.

32. The Registrar may, on request made in the prescribed manner by the registered proprietor or by some person entitled by law to act in his name,—

(1) Correct any error in the name or address of the registered proprietor of a trade mark (*a*); or

(2) Enter any change in the name or address of the person who is registered as proprietor of a trade mark (*b*); or

(3) Cancel the entry of a trade mark on the register; or

(4) Strike out any goods or classes of goods from those for which a trade mark is registered (*c*); or

(5) Enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of such trade mark (*d*).

Any decision of the Registrar under this section shall be subject to appeal to the Board of Trade.

This section comes from sect. 91 of the Act of 1883, but contains some material modifications, and it should be noted that sub-sect. (a) of that section is included in the wider provision of sect. 12 (6) of the Act of 1905.

For procedure, see Rules 85—87 and Forms 20—24; and as to appeals, Rules 123—128.

(*a*) This is not confined to clerical errors as was the old sect. 91 (b).

(*b*) This sub-section is new and meets the difficulty of such cases as *New Ormonde Cycle Co.'s T. M.* (1896), 13 R. P. C. 475. Rule 77 makes it obligatory on a proprietor to apply for entry of a new address.

(*c*) This provision is frequently made use of in order to anticipate an application to rectify the register in cases where registration has been obtained for a wider description of goods than those for which it can validly be registered: see notes to sect. 35.

(*d*) This enables a proprietor to put his registration in order where without a disclaimer or limitation it might be liable to removal under sect. 35.

Registration of assignments.

33.—(1) [Where a person becomes entitled by assignment, transmission, or other operation of law to a registered trade mark, he shall make application to the registrar to register his title, and the registrar shall, on receipt of such application and on proof of title to his satisfaction, register him as the proprietor of the trade mark, and shall cause an entry to be made in the prescribed manner on the register of the assignment, transmission, or other instrument affecting the title. Any decision of the registrar under this section shall be subject to appeal to the Court.

(2) Except in cases of appeals under this section and applications made under section thirty-five of this Act, a document or instrument in respect of which no entry has been made in the register in accordance with the provisions of subsection (1) aforesaid shall not be admitted in evidence in any Court in proof of the title to a trade mark unless the Court otherwise directs.]

This section in its present form was introduced by the Act of 1919 (s. 11), in place of the original section in the Act of 1905, which was in the following terms:—

Subject to the provisions of this Act where a person becomes entitled to a registered trade mark by assignment, transmission, or other operation of law, the Registrar shall, on request made in the

prescribed manner, and on proof of title to his satisfaction, cause the name and address of such person to be entered on the register as proprietor of the trade mark. Any decision of the Registrar under this section shall be subject to appeal to the Court or, with the consent of the parties, to the Board of Trade.

The provisions on this subject in the earlier legislation were contained in sect. 87 of the Act of 1883.

For procedure, see Rules 70—76; and as to appeals to the Court, Rule 122.

The substantive provisions in regard to assignment and transmission of trade marks are contained in sects. 22, 23, 27 and 38. Registration constitutes *primâ facie* evidence of validity: sect. 40; and provisions in case of rival claims are contained in sect. 20.

The provision as to making an entry on the register of the instrument, and sub-sect. (2) are both new, and may afford a check to attempts to obtain an entry of an assignment or transmission without a full disclosure of the circumstances: see, for example, *Johnson's T. M.* (1909), 26 R. P. C. 195; and cf. *Pinto* v. *Badman* (1891), 8 R. P. C. 181, where the documents eventually disclosed disproved the plaintiffs' title.

Alteration of registered trade mark.

34. The registered proprietor of any trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter such trade mark in any manner not substantially affecting the identity of the same, and the Registrar may refuse such leave or may grant the same on such terms [and subject to such limitations as to mode or place of user] as he may think fit, but any such refusal or conditional permission shall be subject to appeal to the Board of Trade. If leave be granted, the trade mark as altered shall be advertised in the prescribed manner.

This section is derived from sect. 92 of the Act of 1883.

The words in brackets were introduced by sect. 12 of the Act of 1919.

For procedure, see Rules 88, 89; and as to appeals, Rules 123—128. The Board of Trade may refer the appeal to the Court (sect. 59), as was done in *Carron Co.'s T. M.* (1910), 27 R. P. C. 412.

The power to allow alterations is vested by this section in the Registrar instead of the Court as under the repealed Act; it is also much wider, as the power was formerly limited to alterations in any particular not being an essential particular as defined by sect. 64. The authorities on sect. 92 of the Act of 1883 may be found in Seb. p. 641.

Rectification of register.

35. Subject to the provisions of this Act (*a*)—

(1) The Court may on the application (*b*) in the prescribed manner of any person aggrieved (*c*) by the non-insertion in or omission from the register of any entry, or by

any entry made in the register without sufficient cause (*d*), or by any entry wrongly remaining on the register (*e*), or by any error or defect in any entry in the register, make such order for making, expunging, or varying such entry as it may think fit (*f*):

(2) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connexion with the rectification of the register (*g*):

(3) In case of fraud in the registration or transmission of a registered trade mark, the Registrar may himself apply to the Court under the provisions of this section:

(4) Any order of the Court rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

This section is a modification of sect. 90 of the Act of 1883. Its application is limited by sect. 41: see notes, pp. 85, 86.

(*a*) See, in particular, sect. 36, relating to marks registrable under the Act of 1905, but not under the legislation in force at the date of registration, and sect. 41 as to the conclusiveness of the original registration in certain circumstances.

(*b*) Applications under this section may now also be made to the Registrar unless an action is pending: see sect. 9 of the Act of 1919, below.

In England the application, when made to the Court direct, is in practice made by notice of motion in the Chancery Division, though no rules have been made defining the prescribed manner. It cannot be made by counterclaim: see *Pinto* v. *Badman* (1891), 8 R. P. C. 181. As to jurisdiction of other Courts, see p. 104. The notice should be served on the Registrar (see Rule 130) and on the registered proprietor, though service on the latter may be dispensed with: *Cie. Générale, &c.'s T. M.* (1891), 8 R. P. C. 446; *King & Co.'s T. M.* (1892), 9 R. P. C. 350; *Royal Baking Powder Co.'s T. Ms.* (1897), 14 R. P. C. 425; *Ashton's T. M.* (1900), 48 W. R. 389; cf. *Smollens' T. M.* (1912), 29 R. P. C. 158 (decided on sect. 37). As to foreign proprietors, see also Trade Mark Rules, r. 9, and *Rollins' T. M.* (1915), 32 R. P. C. 472. As to security for costs, see *Cie. Générale, &c.'s T. M.*, *supra*, and *Soc. des Verreries' T. M.* (1893), 10 R. P. C. 290.

Particulars of the objections relied upon will be ordered: *Kenrick & Jefferson's T. M.*, reported on another point at 28 R. P. C. 45; and discovery may be ordered in an appropriate case: *Wills' T. M.* (1892), 9 R. P. C. 346.

The question whether any issue decided between the parties on an opposition becomes *res judicata* as regards an application to rectify was raised in *Kenrick & Jefferson's T. M.* (1911), 28 R. P. C. 45.

but only one preliminary point was decided. See also observations in *Coleman* v. *Stephen Smith & Co.* (1912), 29 R. P. C. at p. 90. The correct view would seem to be that, inasmuch as an application to rectify is not a matter which concerns the applicant alone, but is for the public benefit, it should not be affected by anything which has taken place *inter partes*.

(*c*) *Person aggrieved.*—To prove that he is aggrieved, a person must show that the effect of the continuance of the entry on the register unaltered would or might limit his legal rights so that, by reason of the entry, he could not lawfully do that which otherwise he might do, or that damage or injury to himself is possible in a practical and not merely fantastic sense: see *Powell's T. M.* (1894), 11 R. P. C. 4; *Wright, Crossley & Co.'s T. M.* (1898), 15 R. P. C. 379; *Rivière's T. M.* (1884), 26 Ch. D. 48; 55 L. J. Ch. 545; *Apollinaris Co.'s T. M.* (1891), 8 R. P. C. 137. Where the grievance is, not the particular entry, but only the fact that the proprietor has a registered trade mark at all, that is not sufficient: *Wright, Crossley & Co.'s T. M.*, *supra*, per Lindley, M. R.; nor where the grievance is purely sentimental: *Ellis & Co.'s T. M.* (1904), 21 R. P. C. 617; nor where the registration is merely superfluous and adds nothing to the existing rights of the proprietor: *Crompton & Co.'s T. M.* (1902), 19 R. P. C. 265.

A foreigner may be a person aggrieved: *Rivière's T. M.*, *supra*, and *European Blair Co.'s T. M.* (1896), 13 R. P. C. 600.

Whether the Royal Warrant Holders' Association or any member not holding a warrant from the Prince of Wales is a person aggrieved by a mark suggesting the Prince's patronage may be doubtful: *Imperial Tobacco Co.'s T. M.* (1915), 32 R. P. C. 40, 361.

Other cases on this point which may be referred to are: *Talbot's T. M.* (1894), 11 R. P. C. 77; *Zonophone T. M.* (1903), 20 R. P. C. 450; *Neostyle Co.'s T. M.*, *ibid.* p. 803.

A person whose application to register has been refused must appeal in accordance with the procedure laid down (see sects. 12 and 14), and cannot apply under this section as a person aggrieved by the non-insertion of an entry without sufficient cause: *Normal & Co.'s Appn.* (1887), 4 R. P. C. 123.

Once it is shown that the applicant has a *locus standi* as a person aggrieved, the application may be supported upon any ground on which the validity can be attacked, the purity of the register being a matter of concern to the Court: *Paine* v. *Daniell* (1893), 10 R. P. C. 217; and, subject now to sect. 41, delay by the applicant in seeking rectification is no bar: *Addley Bourne* v. *Swan & Edgar* (1903), 20 R. P. C. 105; nor, presumably, would the absence of merits on the part of the applicants affect the case: cf. *Havana Commercial Co.'s Appn.* (1916), 33 R. P. C. 399, though in that case it should be observed that *locus standi* was unnecessary. Compare, on the repealed Act, *Batt's T. M.* (1898), 15 R. P. C. 534; 16 R. P. C. 411.

(*d*) *Entry made without sufficient cause.*—In *Batt's T. M.* (1898), 15 R. P. C. 534, the C. A. held that these words in sect. 90 of the Act of 1883 covered the case of any entry wrongly on the register, however it got there, but that case is specially provided for in the present Act by the words next following. Hence, in this Act, the

words appear to relate to the time when the entry was first made. The fact that this distinction is here clearly drawn is material in considering the meaning of "original registration" in sect. 41.

(*e*) These words did not occur in sect. 90 of the Act of 1883. It is evident that, by contrast with the preceding words, they include cases where the entry was made with sufficient cause, but owing to some circumstances arising since the date of registration, wrongly remains on the register. See this question discussed at p. 9, *ante*, and as to the effect of sect. 41, p. 85, *post*.

(*f*) The onus of establishing the case for rectification is on the applicant (sect. 40), and in doubtful cases, particularly in regard to marks of long standing, every presumption will be made in favour of the registered proprietor: *Chesebrough Co.'s T. M.* (1902), 19 R. P. C. 342; *Bass' T. M., ibid.* p. 539; *Burroughs & Wellcome's T. M.* (1904), 22 R. P. C. 164.

A classified list of examples of occasions for rectification of the register may be found in Seb. pp. 635 *et seq.*

(*g*) On an application under sect. 35, where an order is sought to expunge an entry, the Court may, as an alternative, modify the entry, but will not do so unless all the materials necessary for the decision are before it: *Gestetner's T. M.* (1908), 25 R. P. C. 156. Whether, on an application to expunge a mark which could only have been registered under sect. 21, the Court could consider that section and allow the registration to stand, is doubtful: see *Roskill's T. M.* (1915), 32 R. P. C. 577.

There is power on an application under this section to remove a mark from Part A. to Part B.: see sect. 9 of the Act of 1919.

Trade marks registered under previous Acts.

***36.** No trade mark which is upon the register at the commencement of this Act and which under this Act is a registrable trade mark shall be removed from the register on the ground that it was not registrable under the Acts in force at the date of its registration. But nothing in this section contained shall subject any person to any liability in respect of any act or thing done before the commencement of this Act to which he would not have been subject under the Acts then in force.

This section was introduced by the Act of 1905, and reversed the legal position which existed prior to that Act. As all marks registered under earlier Acts which are still on the register have now been on for more than seven years, so that sect. 41 is necessarily operative, the importance of this section has been reduced.

The effect of the section has been expressed as being:—"Take the facts of to-day and the law of to-day and enquire whether, if the mark were taken off it would, on the facts of to-day and the law of to-day, be entitled to go on again. If so, leave it alone." See per Buckley, L. J., in *Gestetner's T. M.* (1908), 25 R. P. C. p. 160. A doubt was subsequently expressed by Parker, J., as to whether the material date at which the facts and law were to be considered was not the date of the passing of the Act of 1905: *Philippart* v. *Whiteley* (1908), 25 R. P. C. p. 571.

Non-user of trade mark.

37. A registered trade mark may, on the application (*a*) to the Court of any person aggrieved (*b*), be taken off the register in respect of any of the goods for which it is registered, on the ground that it was registered by the proprietor or a predecessor in title without any bonâ fide intention to use (*c*) the same in connexion with such goods, and there has in fact been no bonâ fide user of the same in connexion therewith, or on the ground that there has been no bonâ fide user of such trade mark in connexion with such goods during the five years immediately preceding the application, unless in either case such non-user is shown to be due to special circumstances in the trade, and not to any intention not to use or to abandon such trade mark in respect of such goods (*d*).

This section was introduced by the Act of 1905, but it had been held previously that if a mark had been registered by a person with no *bonâ fide* intention of using it, it had been registered without sufficient cause, and could be removed under sect. 90 of the Act of 1883: *Batt's T. M.* (1899), 16 R. P. C. 411.

(*a*) The procedure is the same as on an application under sect. 35, and may now be made to the Registrar: see note (*b*), p. 80.

(*b*) As to the meaning of "person aggrieved," see note (*c*), p. 81.

(*c*) In *Philippart* v. *Whiteley* (1908), 25 R. P. C. 565, Parker, J., suggested that the use referred to must be use *as a trade mark, i.e.*, for the purpose of distinguishing the proprietor's goods: see p. 45. In *Andrew* v. *Kuehnrich* (1913), 30 R. P. C. 93, 677, some of the judges expressed a contrary opinion. The same question was raised in argument in *Woodward* v. *Boulton Macro* (1915), 32 R. P. C. 173. It is submitted that the word *bonâ fide* implies some reference to the motive with which the mark is used, and that, although the Courts will not be hypercritical in examining the form in which the mark has been used, mere use, for example, as a descriptive term will not be *bonâ fide* user within the section. As to user of a trade mark generally, see p. 59, *ante*.

(*d*) *Bonâ fide* intention to use means a present intention, and not a mere expectation, of possible future user: *Batt's T. M.*, *supra*; *Muratti* v. *Murad* (1911), 28 R. P. C. 497; *Hart's T. M.* (1902), 19 R. P. C. 569. Cf. *Neuchatel Co.'s Appn.* (1913), 30 R. P. C. 349, on the construction of "proposed to be used."

To secure the benefit of the saving clause, the proprietor must show, not merely that special circumstances would in any event have prevented user of the mark, but that he would have used the mark if those circumstances had not occurred: *Crean's T. M.* (1921), 38 R. P. C. 155. Reference may be necessary in some cases to art. 307 of the Treaty of Peace: see p. 204.

Effect of Registration.

Powers of registered proprietor.

38. Subject to the provisions of this Act (*a*)—

(1) The person for the time being entered in the register as proprietor of a trade mark shall, subject to any rights appearing from such register to be vested in any other person, have power to assign the same, and to give effectual receipts for any consideration for such assignment:

(2) Any equities in respect of a trade mark may be enforced in like manner as in respect of any other personal property (*b*).

This section is derived from sect. 87 of the Act of 1883.

(*a*) See sects. 22, 23 and 27, and notes thereto, in relation to assignment and transmission of trade marks; and as to procedure by which the assignee can obtain registration, see sect. 33.

(*b*) No notice of trust can be entered on the register: see sect. 5.

Rights of proprietor of trade mark.

†**39.** Subject to the provisions of section forty-one (*a*) of this Act and to any limitations and conditions entered upon the register (*b*), the registration (*c*) of a person as proprietor of a trade mark shall, if valid, give to such person the exclusive right to the use of such trade mark upon or in connexion with the goods in respect of which it is registered (*d*): Provided always that where two or more persons are registered proprietors of the same (or substantially the same) trade mark in respect of the same goods no rights of exclusive user of such trade mark shall (except so far as their respective rights shall have been defined by the Court) be acquired by any one of such persons as against any other by the registration thereof, but each of such persons shall otherwise have the same rights as if he were the sole registered proprietor thereof (*e*).

(*a*) See proviso to that section.

(*b*) As to limitations and conditions, see sects. 12 (2), 12 (4), 14 (4), 14 (6), 21 and 23.

(*c*) *I.e.*, registration in Part A.

(*d*) As to the general nature of the exclusive right conferred, see Introduction, p. 11; and as to the change of law effected by this section, the general note below, after sect. 41.

(*e*) This proviso was new in 1905. Provision for concurrent registration is made by sect. 21. The proprietor of an unregistered mark is protected by the proviso to sect. 41 in the cases there specified.

† Only the proviso to this section applies to registrations in Part B. of the register.

40. In all legal proceedings relating to a registered trade mark (including applications under section thirty-five of this Act) the fact that a person is registered as proprietor of such trade mark shall be primâ facie evidence of the validity of the original registration of such trade mark and of all subsequent assignments and transmissions of the same (*a*). Registration to be primâ facie evidence of validity.

(*a*) It should be observed that this section applies to registrations in Part B., while sect. 41 does not. As to assignments, see sects. 22, 23, 27, 33 and 38. As to this section generally, see note after sect. 41.

†**41.** In all legal proceedings relating to a registered trade mark (including applications under section thirty-five of this Act) the original registration of such trade mark shall after the expiration of seven years from the date of such original registration (or seven years from the passing of this Act, whichever shall last happen) be taken to be valid in all respects unless such original registration was obtained by fraud, or unless the trade mark offends against the provisions of section eleven of this Act: Registration to be conclusive after seven years.

Provided that nothing in this Act shall entitle the proprietor of a registered trade mark to interfere with or restrain the user by any person of a similar trade mark upon or in connexion with goods upon or in connexion with which such person has, by himself or his predecessors in business, continuously used (*a*) such trade mark from a date anterior to the user [or registration, whichever is the earlier,] of the first-mentioned trade mark by the proprietor thereof or his predecessors in business, or to object (on such user being proved) to such person being put upon the register for such similar trade mark in respect of such goods under the provisions of section twenty-one of this Act.

The words in square brackets were introduced by sect. 12 of the Act of 1919, and remove a doubt raised in *Williams* v. *Massey* (1911), 28 R. P. C. 512. Sect. 6 of the Act of 1919 affects the operation of the section in regard to certain classes of marks.

(*a*) Such user must probably be a substantial user: *Williams* v. *Massey*, *supra*. The case of a second registered mark is provided for by sect. 39.

General Note to sects. 39—41.

Sects. 39, 40 and 41 were new sections in the Act of 1905: they deal, though in a substantially different manner, with the subject-matter covered by sect. 76 of the Act of 1883, which was as follows:—

"The registration of a person as proprietor of a trade mark shall

† Only the proviso to this section applies to registrations in Part B. of the register.

be primâ facie evidence of his right to the exclusive use of the trade mark, and shall, after the expiration of five years from the date of registration, be conclusive evidence of his right to the exclusive use of the trade mark subject to the provisions of this Act."

It will be observed that the earlier part of that section did not in terms confer any new exclusive right; it only dealt with the evidence and onus of proof in regard to a right, which, apart from the statute, might have been capable of proof, and which, notwithstanding the statute, could be shown by rebutting evidence not to exist: *Pinto* v. *Badman* (1891), 8 R. P. C. 181. The latter part of sect. 76, though also purporting to deal only with evidence, might in practice have operated to enable a trader to establish a right which, but for the statute, could have been proved not to exist. This result might, however, be avoided by rectification of the register under sect. 90 of the Act of 1883, as construed by legal decisions: see *Batt's T. M.* in C. A. (1898), 15 R. P. C. 534. The practical position, therefore, was that, after the lapse of five years, the existence of the exclusive right still depended upon the validity of the registration, and the lapse of five years in no way affected the grounds upon which such validity could be attacked.

The Act of 1905 adopted a more logical system. Instead of making registration effective only as evidence of a right or as shifting the onus of proof, it provides that registration, if valid, shall confer a certain qualified monopoly: sect. 39; and see pp. 11, 12, *ante*. Validity of the registration is, therefore, the test. Sect. 40 establishes certain presumptions as to validity, which can be rebutted; and sect. 41 further provides that, after the lapse of seven years, there is to be an absolute presumption as to the validity of the original registration, except in certain specified cases.

The terms of sect. 41 are therefore of great importance, as they may make it in certain circumstances impossible to contest the exclusive right conferred by sect. 39. The section is, however, not entirely free from ambiguity, and its construction cannot be said to be finally settled. "Registration" may mean the act of making an entry on the register, a single act done at a definite time, or it may refer to the fact of the entry being on the register, a condition which is continuous. The word is used with the former significance in sects. 17 and 18, and with the latter significance in sects. 28—30. In sect. 41, the words "original registration" would appear to point to the original act. On that view, it would seem that the continuance of the mark on the register could be attacked, even after the lapse of the seven years, if subsequent events affecting the trade mark could be used to show that, notwithstanding the validity of the original registration, the mark was wrongly remaining on the register: see pp. 9, 80, *ante*. This construction gives rise to little difficulty in sect. 41, but sects. 39 and 40 must also be considered. The matter was not fully dealt with in *Woodward* v. *Boulton Macro* (1915), 32 R. P. C. 173, and the point was left open in *Imperial Tobacco Co.* v. *De Pasquali* (1918), 35 R. P. C. 185.

The words in sect. 41 which refer to sect. 11 are also somewhat obscure. They cannot be taken quite literally (since the mark itself cannot "offend" against sect. 11), and might be paraphrased so as to read: "unless the mark is one the use of which would by reason

of its being calculated to deceive or otherwise be disentitled to protection," &c., or "unless the act of registration was forbidden by sect. 11."

No construction has yet been put upon the word "fraud" as used in sect. 41. In *Palmer's T. M.* (1882), 21 Ch. D. p. 57, Jessel, M. R., characterises an application to register as a trade mark words which the applicant knows to be a mere description of the article as an attempt to deceive the Registrar, but he was then dealing with a different Act of Parliament. *Hyde's T. M.* (1878), 7 Ch. D. 724, illustrates the case of an applicant who knew the facts, which were sufficient to invalidate his registration, but was ignorant of the law. It is perhaps material to note that in the form of application the applicant is described as a person "who claims to be the proprietor" of the trade mark: see Form No. 2; but a claim does not necessarily imply a representation that the claim is well founded.

If the date of the application to rectify is after the expiration of the seven years, the section applies, although an action for infringement was pending before the expiration: *Andrew* v. *Kuehnrich* (1913), 30 R. P. C. 93, 677.

Unregistered trade mark.

*42. No person shall be entitled to institute any proceeding to prevent or to recover damages for the infringement of an unregistered trade mark unless such trade mark was in use before the thirteenth of August one thousand eight hundred and seventy-five, and has been refused registration under this Act. The Registrar may, on request, grant a certificate that such registration has been refused (*a*).

This section comes from sect. 77 of the Act of 1883, with material alterations. Formerly, refusal of registration under any Act was sufficient. The present section requires refusal of an application under the Act of 1905, so that, when it is desired to protect an old unregistered trade mark *qua* trade mark, even if it has been already refused registration under an earlier Act, it should be tendered for registration again. As the action for passing off is not affected by the restriction (sect. 45), the proprietor of an unregistered mark which has not been refused is not deprived of all remedy. A mark which has been refused registration in Part A. may be registrable in Part B. under the Act of 1919.

The section does not specifically provide that an assignee of a registered mark must obtain registration before commencing an action, and, if the object of the section is to ensure that the register should serve as notice to other traders of marks already appropriated, the fact that the mark is registered would be sufficient. No decision on this point has been given under the Act of 1905. As to the Act of 1883, see *Ihlee* v. *Henshaw* (1886), 3 R. P. C. 15; *Revelière* v. *Gateley* (1890), 89 L. T. Journal, 314. In *Magnolia Metal Co.* v. *Atlas Metal Co.* (1897), 14 R. P. C. 389, the plaintiffs were not registered at the date of the judgment. If registration of the assignment has not been obtained and it is necessary to avoid

any delay, the registered proprietor should be joined. Cf. *Richards* v. *Butcher* (1890), 7 R. P. C. 288, where a plaintiff who had no title to the mark at all was allowed to join the registered proprietor.

(*a*) As to procedure, see Rule 99 and Form T. M. 32.

43. [In any action or proceeding relating to a trade mark or trade name the tribunal shall admit evidence of the usages of the trade concerned and of any relevant trade mark or trade name or get-up legitimately used by other persons.]

This section in its present form is substituted by the Act of 1919 (see sect. 12 and the second schedule) for the original section of the Act of 1905, which was in the following terms:—

In an action for the infringement of a trade mark the Court trying the question of infringement shall admit evidence of the usages of the trade in respect to the get-up of the goods for which the trade mark is registered, and of any trade marks or get-up legitimately used in connexion with such goods by other persons.

As to the character of evidence which is admissible generally, see p. 31.

User of name, address, or description of goods.

44. No registration under this Act (*a*) shall interfere with any bonâ fide use by a person of his own name or place of business or that of any of his predecessors in business, or the use by any person of any bonâ fide description of the character or quality of his goods.

This section was new in the Act of 1905. In the case of applications to register names or words, it affords an argument against attaching too much weight to the apprehension lest registration should at some future time embarrass honest traders, but is only one of the factors to be considered, and cannot be urged as a reason for allowing registration indiscriminately.

Numerous illustrations of what may and what may not be considered the *bonâ fide* use of a name or descriptive word can be found in passing off cases: see examples cited at pp. 22, 23. An unsuccessful attempt to rely on this section was made in *Farrow* v. *Seyfried* (1921), 38 R. P. C. 114, and it is difficult to suppose that the Courts will lend any encouragement to the use by one trader of the registered mark of another unless such mark is substantially a part of the ordinary English language without the use of which certain qualities cannot practically be described.

(*a*) An important question arose in *Woodward* v. *Boulton Macro* (1915), 32 R. P. C. 173, where it was held that this section did not apply to the case of a word registered prior to the Act of 1905. The possible relevance of sect. 6 was considered, but no reference appears to have been made to the meaning which must be attached to the word "registration" in sects. 28—30: see note, p. 86.

45. Nothing in this Act contained shall be deemed to affect rights of action against any person for passing off goods as those of another person or the remedies in respect thereof. "Passing-off" action.

This section was new in 1905, and sets at rest any doubt on the point under the previous legislation. Cf. *Sen Sen* v. *Britten* (1899), 16 R. P. C. 137. See, however, sect. 6 (1) of the Act of 1919. As to the action for passing off, see pp. 7, 14.

Legal Proceedings.

46. In any legal proceeding in which the validity of the registration of a registered trade mark comes into question and is decided in favour of the proprietor of such trade mark, the Court may certify the same, and if it so certifies then in any subsequent legal proceeding in which such validity comes into question the proprietor of the said trade mark on obtaining a final order or judgment in his favour shall have his full costs, charges, and expenses as between solicitor and client, unless in such subsequent proceeding the Court certifies that he ought not to have the same. Certificate of validity.

This section comes from sect. 18 of the Act of 1888, which introduced a corresponding provision as 77 (a) of the Act of 1883, but it must be noted that the present section deals directly with the question of validity of the registration, whereas sect. 77 (a) referred to the "right to the exclusive use of a trade mark." That right might have come into question without a dispute as to the validity of the registration, unless the mark had been registered for five years: see p. 85. Further, sect. 77 (a) only related to actions for infringement, and not to *any* legal proceeding.

There is apparently no right of appeal against the granting of a certificate: *Haslam* v. *Hall* (1888), 5 R. P. C. 144; *Pinto* v. *Badman* (1891), 8 R. P. C. p. 198; but in a subsequent action where a plaintiff seeks to have the section applied in his favour, it may be competent for the defendant to argue that there was no jurisdiction to grant the certificate: see *Field* v. *Wagel* (1900), 17 R. P. C. 266.

In *Addley Bourne* v. *Swan & Edgar* (1903), 20 R. P. C. 105, a certificate was refused as a matter of discretion where a motion to rectify had been abandoned. Under sect. 33 of the Patents Act, 1907, certificates of validity are sometimes granted, although the issue is abandoned at the trial upon some evidence of validity being given: *Browne* v. *Cyko Manufacturing Co.* (1920), 37 R. P. C. 270.

For examples of certificates granted under the present Act, see *Cie. Industrielle des Petroles' T. M.* (1907), 24 R. P. C. 585; *Boord* v. *Thom, ibid.* p. 722. In *Major Bros.* v. *Franklin* (1908), 25 R. P. C. 406, a certificate was granted where the question of validity was argued, though there was no application to rectify the register.

47. In any legal proceeding in which the relief sought includes alteration or rectification of the register, the Registrar Registrar to have notice

of proceeding for rectification.

shall have the right to appear and be heard, and shall appear if so directed by the Court. Unless otherwise directed by the Court, the Registrar in lieu of appearing and being heard may submit to the Court a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter in issue or of the grounds of any decision given by him affecting the same or of the practice of the office in like cases, or of such other matters relevant to the issues, and within his knowledge as such Registrar, as he shall think fit, and such statement shall be deemed to form part of the evidence in the proceeding.

This section was new in 1905.

Where the question is one which concerns only the applicant to rectify and the proprietor, the Registrar does not usually appear, but where questions of general importance are raised, he is not infrequently represented: *e.g.*, *Bowden* v. *Bowden* (1914), 31 R. P. C. p. 391; *Imperial Tobacco Co.'s T. Ms.* (1915), 32 R. P. C. p. 368.

Costs.

Costs of proceedings before the Court.

48. In all proceedings before the Court under this Act the costs of the Registrar shall be in the discretion of the Court, but the Registrar shall not be ordered to pay the costs of any other of the parties.

This section was new in 1905. See Rules 55 and 56.

Sect. 48 deals only with the costs of the Registrar, but it is convenient to deal here with other questions as to the costs of proceedings for registration or rectification. The costs of proceedings before the Registrar are provided for by the Act of 1919 as follows:—

Sect. 10. In all proceedings before the Registrar under the principal Act or this Act the Registrar shall have power to award to any party such costs as he may consider reasonable, and to direct how and by what parties they are to be paid, and any such order may be made a rule of court.

That section replaced sect. 14 (10) of the Act of 1905, now repealed, which was as follows:—

The Registrar, or in the case of an appeal to the Board of Trade, the Board of Trade shall have power in proceedings under this section to award to any party such costs as they may consider reasonable, and to direct how and by what parties they are to be paid.

Under that sub-section, in case of an appeal from his decision, the Registrar did not usually deal with the question of costs until the appeal had been determined, and that is still the practice. Prior to the Act of 1905, the Court could not deal with the costs of proceedings before the Registrar: *Brandreth's T. M.* (1878), 9 Ch. D. 618; *Australian Wine Importers' Appn.* (1889), 41 Ch. D. 278. The question under the Act of 1905 was raised, but not decided, in *Cording's Appn.* (1916), 33 R. P. C. pp. 96, 386. It is possible, but not likely, that sect. 8 (2) of the Act of 1919 may be construed as

giving the Court jurisdiction to deal with such costs, though it was, no doubt, inserted for a different purpose.

Under sect. 53, the parties can claim a hearing before the Registrar as to costs.

As regards costs on appeal to the Court, in cases under sect. 12, if service is not directed upon any third party, the usual rule is that, whatever the result, the applicant is ordered to pay the costs of the Registrar, such costs being regarded as part of the expenses of the application. In special cases, where some new question of principle is raised, especially if the Court decides against the Registrar, the Registrar does not press for costs: see *British Thomson-Houston Co.'s Appn.* (1917), 34 R. P. C. 169; *Cadbury's Appn.* (1915), 32 R. P. C. 456. No order was made as to costs in *Bagots, Hutton & Co.'s Appn.* (1912), 29 R. P. C. 702. Where the applicant succeeds in the Court of Appeal, it is usual that the order of the Court below as to costs should not be disturbed, but that the Registrar should not get costs in the Court of Appeal: see *California Fig Syrup Co.'s Appn.* (1909), 26 R. P. C. 846; *National Cash Register Co.'s Appn.* (1917), 34 R. P. C. 354; *Du Cros' Appn.* (1912), 29 R. P. C. p. 78; and see *Eastman, &c. Co.'s Appn.* (1898), 15 R. P. C. 476.

Where parties appear on an appeal under sect. 12, in pursuance of a direction to serve them, they may, if successful, get their costs: *e.g.*, *Kenrick & Jefferson's Appn.* (No. 1) (1890), 7 R. P. C. 321; *Neuchatel Co.'s Appn.* (1913), 30 R. P. C. 349; but leave to appear may be given on special terms: *e.g.*, *Schicht's Appn.* (1912), 29 R. P. C. 483.

In the case of appeals under sect. 14, the ordinary rule is that the unsuccessful party pays the costs, including the costs of the Registrar: *Havana Commercial Co.'s Appn.* (1916), 33 R. P. C. p. 405; but where the opposition is part of other proceedings and each party is partially successful, the result may be that no costs are given: *e.g.*, *Jelley's Appn.* (1878), 51 L. J. Ch. 639; *Mouson* v. *Boehm* (1884), 26 Ch. D. 398.

Prior to the Act of 1919, applications under sect. 35 to rectify the register had to be made to the Court, and, normally, if the application was successful the registered proprietor was ordered to pay the costs of the application, including those of the Registrar, unless costs were unnecessarily incurred or there were other special circumstances: *e.g.*, *Paine's T. M.* (1908), 25 R. P. C. 329; *Bradley's T. M.* (1892), 9 R. P. C. 205; *Burke's T. M.* (1917), 34 R. P. C. 213; *Fitchett's T. M.* (1919), 36 R. P. C. 296.

Costs on the higher scale were allowed in *Crosfield's Appn.* (1910), 27 R. P. C. 433, and allowance for three counsel, the latter being also allowed in *Burroughs & Wellcome's T. M.* (1905), 22 R. P. C. 164. Such costs were refused in *Apollinaris Co.'s T. M.* (1891), 8 R. P. C. 137.

Evidence.

49. In any proceeding under this Act before the Board of Trade or the Registrar, the evidence shall be given by statutory declaration in the absence of directions to the contrary, but, in any case in which it shall think it right so to do, the tribunal may

Mode of giving evidence.

(with the consent of the parties) take evidence vivâ voce in lieu of or in addition to evidence by declaration. Any such statutory declaration may in the case of appeal be used before the Court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.

In case any part of the evidence is taken vivâ voce the Board of Trade or the Registrar shall in respect of requiring the attendance of witnesses and taking evidence on oath be in the same position in all respects as an Official Referee of the Supreme Court.

This section was new in 1905. Previously it had been necessary in proceedings before the Court to confirm by affidavit the contents of any declarations which it was desired to use.

In practice, *vivâ voce* evidence is very seldom used.

As to declarations, see Rules 102 and 103.

Sealed copies to be evidence.

50. Printed or written copies or extracts of or from the register, purporting to be certified by the Registrar and sealed with the seal of the Patent Office, shall be admitted in evidence in all Courts in His Majesty's dominions, and in all proceedings, without further proof or production of the originals.

This section comes from sect. 89 of the Act of 1883.

Certificate of Registrar to be evidence.

51. A certificate purporting to be under the hand of the Registrar as to any entry, matter, or thing which he is authorised by this Act, or rules made thereunder, to make or do, shall be primâ facie evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or not done.

This comes from sect. 96 of the Act of 1883: see Rules 99—101.

Certificate of Board of Trade to be evidence.

52.—(1) All documents purporting to be orders made by the Board of Trade and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or by any person authorised in that behalf by the President of the Board, shall be received in evidence, and shall be deemed to be such orders without further proof, unless the contrary is shown.

(2) A certificate, signed by the President of the Board of Trade, that any order made or act done is the order or act of the Board, shall be conclusive evidence of the fact so certified.

This comes from sect. 25 of the Act of 1888, inserted as sect. 102 (A) in the Act of 1883.

Part II.

Powers and Duties of Registrar of Trade Marks.

Exercise of discretionary power by Registrar.

53. Where any discretionary or other power is given to the Registrar by this Act or rules made thereunder he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade mark in question without (if duly required so to do within the prescribed time) giving such applicant or registered proprietor an opportunity of being heard.

This comes from sect. 94 of the Act of 1883. As to procedure for a hearing, see Rules 78—81.

Appeal from Registrar.

54. Except where expressly given by the provisions of this Act or rules made thereunder there shall be no appeal from a decision of the Registrar otherwise than to the Board of Trade, but the Court, in dealing with any question of the rectification of the register (including all applications under the provisions of section thirty-five of this Act), shall have power to review any decision of the Registrar relating to the entry in question or the correction sought to be made.

This was a new section in 1905. Against refusals to register under sect. 12, appeals may be made either to the Court or the Board of Trade. Under sect. 14, as amended by the Act of 1919, appeals in opposition cases must now be made to the Court. Other cases of appeals are referred to in the notes to the section relevant to the subject-matter in question.

In *Coleman* v. *Stephen Smith & Co.* (1912), 29 R. P. C. 81, where there was a motion by the plaintiffs to remove the defendants' mark on the ground that it was deceptive, it was suggested that a decision by the Registrar on a previous opposition to the registration, against which no appeal had been made, amounted to a case of *res judicata*, but attention was not called to this section, and no decision on the point was given. It does not appear that attention was called to the importance of rectification from the public point of view.

It should be observed that the reference to the Court in this section only relates to its dealing with any question of rectification, and not to appeals on applications to register. As to whether the Registrar's decision could possibly result in a question being *res judicata* in the latter case, see note (*f*), p. 67.

Recognition of agents.

55. Where by this Act any act has to be done by or to any person in connexion with a trade mark or proposed trade mark or any procedure relating thereto, such act may under and in accordance with rules made under this Act or in particular cases by special leave of the Board of Trade be done by or to an agent of such party duly authorised in the prescribed manner.

This was a new section in 1905. See Rule 10.

Registrar may take directions of law officers.

56. The Registrar may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to His Majesty's Attorney-General or Solicitor-General for England for directions in the matter.

This section is derived from sect. 95 of the Act of 1883.

Annual reports of Comptroller. 46 & 47 Vict. c. 57.

57. The Comptroller General of Patents, Designs, and Trade Marks shall in his yearly report on the execution by or under him of the Patents, Designs, and Trade Marks Act, 1883, and Acts amending the same, include a report respecting the execution by or under him of this Act as though it formed a part of or was included in such Acts.

As to the annual report, see now sect. 76 of the Patents and Designs Act, 1907.

Powers and Duties of the Board of Trade.

Proceedings before Board of Trade.

58. All things required or authorised under this Act to be done by to or before the Board of Trade may be done by to or before the President or a secretary or an assistant secretary of the Board or any person authorised in that behalf by the President of the Board.

This section comes from sect. 25 of the Act of 1888, numbered 102 (A) in the Act of 1883.

Appeals to Board of Trade.

59. Where under this Act an appeal is made to the Board of Trade, the Board of Trade may, if they think fit, refer any such appeal to the Court in lieu of hearing and deciding it themselves, but, unless the Board so refer the appeal, it shall be heard and decided by the Board, and the decision of the Board shall be final.

This section was an extension of the powers to refer contained in sects. 62 and 69 of the Act of 1883. The express provision that the decision of the Board is to be final was new, but in accordance with the view previously held: see *Normal Co.'s Appn.* (1887), 4 R. P. C. 123. For procedure, see Rules 123—129.

Power of Board of Trade to make rules.

60.—(1) Subject to the provisions of this Act the Board of Trade may from time to time make such rules, prescribe such forms, and generally do such things as they think expedient—

(a) For regulating the practice under this Act:

(b) For classifying goods for the purposes of registration of trade marks:

(c) For making or requiring duplicates of trade marks and other documents:

(d) For securing and regulating the publishing and selling or distributing in such manner as the Board of Trade think fit, of copies of trade marks and other documents:

(e) Generally, for regulating the business of the office in relation to trade marks and all things by this Act placed under the direction or control of the Registrar, or of the Board of Trade.

(2) Rules made under this section shall, whilst in force, be of the same effect as if they were contained in this Act.

(3) Before making any rules under this section the Board of Trade shall publish notice of their intention to make the rules and of the place where copies of the draft rules may be obtained in such manner as the Board consider most expedient, so as to enable persons affected to make representations to the Board before the rules are finally settled.

(4) Any rules made in pursuance of this section shall be forthwith advertised twice in the Trade Marks Journal, and shall be laid before both Houses of Parliament, if Parliament be in session at the time of making thereof, or, if not, then as soon as practicable after the beginning of the then next session of Parliament.

(5) If either House of Parliament within the next forty days after any rules have been so laid before such House, resolve that such rules or any of them ought to be annulled, the same shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime under such rules or rule or to the making of any new rules or rule.

This section is derived from sect. 101 of the Act of 1883.
For rules and forms, see Appendix, p. 127.
As to the power of the Board of Trade to direct service of a notice on other parties, see Rule 126; *Extract of Meat, &c. Ltd.'s Appn.* (1900), 17 R. P. C. 161; *Royal Worcester Corset Co.'s Appn.* (1909), 26 R. P. C. 185.

Fees.

Fees.

61. There shall be paid in respect of applications and registration and other matters under this Act, such fees as may be, with the sanction of the Treasury, prescribed by the Board of Trade.

This section comes from sect. 80 of the Act of 1883.
See Rule 3 and Schedule I.

Special Trade Marks.

Standardization, &c., trade marks.

62. [Where any association or person undertakes to certify the origin, material, mode of manufacture, quality, accuracy or other characteristic of any goods by mark used upon or in connection with such goods, the Board of Trade, if and so long as they are satisfied that such association or person is competent to certify as aforesaid, may, if they shall judge it to be to the public advantage, permit such association or person to register such mark as a trade mark in respect of such goods, whether or not such association or person be a trading association or trader or possessed of a goodwill in connection with such certifying.] When so registered such trade mark shall be deemed in all respects to be a registered trade mark, and such association or person to be the proprietor thereof, save that such trade mark shall be transmissible or assignable only by permission of the Board of Trade.

The part of the section printed in brackets was introduced by the Act of 1919 in substitution for the earlier part of the original section of the Act of 1905, which was as follows:—

Where any association or person undertakes the examination of any goods in respect of origin, material, mode of manufacture, quality, accuracy, or other characteristic, and certifies the result of such examination by mark used upon or in connection with such goods, the Board of Trade may, if they shall judge it to be to the public advantage, permit such association or person to register such mark as a trade mark in respect of such goods, whether or not such association or person be a trading association or trader or possessed of a goodwill in connection with such examination and certifying.

For rules in connection with such applications, see Rules 36—40.

It is to be observed that the new form of the section does not require that the applicants should undertake the *examination* of the goods. Several marks were registered before the Act of 1919, although the association in question did not *inspect* the goods. In the application of *Union Nationale Intersyndicale des Marques Collectives* (1922), 39 R. P. C. 97, it was held that the rules, by which the ordinary procedure in opposition cases is made applicable to these special applications, do not enable an opponent to raise any objections which would not be relevant to the case of an ordinary trade mark, such as that the association did not undertake to certify or was not competent to certify. Such objections might be made to the Board of Trade or in proceedings against the Board of Trade. It was also decided that where an application was made and notice of opposition given before the Act of 1919 was passed, and that Act came into operation before the opposition was heard, the substituted provisions must be applied, but that amendment of the notice of opposition should be allowed so as to raise points under the new Act

Sheffield Marks.

63. With respect to the master, wardens, searchers, assistants, and commonalty of the Company of Cutlers in Hallamshire, in the county of York (in this Act called the Cutlers' Company), and the marks or devices (in this Act called Sheffield marks) assigned or registered by the master, wardens, searchers, and assistants of that company, the following provisions shall have effect:— Sheffield marks.

(1) The Cutlers' Company shall continue to keep at Sheffield the register of trade marks (in this Act called the Sheffield register) kept by them at the date of the commencement of this Act, and, save as otherwise provided by this Act, such register shall for all purposes form part of the register:

(2) The Cutlers' Company shall, on request made in the prescribed manner, enter in the Sheffield register, in respect of metal goods as defined in this section, all the trade marks which shall have been assigned by the Cutlers' Company and actually used before the first day of January one thousand eight hundred and eighty-four, but which have not been entered in such register before the passing of this Act:

(3) An application for registration of a trade mark used on metal goods shall, if made after the commencement of this Act by a person carrying on business in Hallamshire, or within six miles thereof, be made to the Cutlers' Company:

(4) Every application so made to the Cutlers' Company shall be notified to the Registrar in the prescribed manner, and, unless the Registrar within the prescribed time gives notice to the Cutlers' Company of any objection to the acceptance of the application, it shall be proceeded with by the Cutlers' Company in the prescribed manner:

(5) If the Registrar gives notice of an objection as aforesaid, the application shall not be proceeded with by the Cutlers' Company, but any person aggrieved may in the prescribed manner appeal to the Court:

(6) Upon the registration of a trade mark in the Sheffield register the Cutlers' Company shall give notice thereof to the Registrar, who shall thereupon enter the mark

in the register of trade marks; and such registration shall bear date as of the day of application to the Cutlers' Company, and have the same effect as if the application had been made to the Registrar on that day:

(7) The provisions of this Act, and of any rules made under this Act with respect to the registration of trade marks and all matters relating thereto, shall, subject to the provisions of this section (and notwithstanding anything in any Act relating to the Cutlers' Company), apply to the registration of trade marks on metal goods by the Cutlers' Company, and to all matters relating thereto; and this Act and any such rules shall, so far as applicable, be construed accordingly with the substitution of the Cutlers' Company, the office of the Cutlers' Company, and the Sheffield register, for the Registrar, the Patent Office, and the Register of Trade Marks respectively; and notice of every entry, cancellation, or correction made in the Sheffield register shall be given to the Registrar by the Cutlers' Company:

(8) When the Registrar receives from any person not carrying on business in Hallamshire or within six miles thereof an application for registration of a trade mark used on metal goods, he shall in the prescribed manner notify the application and proceedings thereon to the Cutlers' Company:

(9) Any person aggrieved by a decision of the Cutlers' Company in respect of anything done or omitted under this Act may, in the prescribed manner, appeal to the Court:

(10) For the purposes of this section the expression "metal goods" means all metals, whether wrought, unwrought, or partly wrought, and all goods composed wholly or partly of any metal:

(11) For the purpose of legal proceedings in relation to trade marks entered in the Sheffield register a certificate under the hand of the Master of the Cutlers' Company shall have the same effect as the certificate of the Registrar.

This section comes from sect. 81 of the Act of 1883, as amended by sect. 20 of the Act of 1888.

For rules, see Rules 104—109.

Cotton Marks.

64.—(1) The Manchester Branch of the Trade Marks Registry of the Patent Office (herein-after called "the Manchester Branch") shall be continued according to its present constitution. A chief officer of the Manchester Branch shall be appointed who shall be styled "the Keeper of Cotton Marks," and shall act under the direction of the Registrar. The present keeper of the Manchester Branch shall be the first Keeper of Cotton Marks. Cotton marks.

(2) As regards cotton goods which have hitherto constituted classes 23, 24, and 25, under the classification of goods under the Patents, Designs, and Trade Marks Acts, 1883 to 1902, the Register of Trade Marks for all such goods, except such as may be prescribed, shall be called "the Manchester Register," and a duplicate thereof shall be kept at the Manchester Branch.

(3) All applications for registration of trade marks for such cotton goods in the said classes (herein-after referred to as "cotton marks") shall be made to the Manchester Branch.

(4) Every application so made to the Manchester Branch shall be notified to the Registrar in the prescribed manner together with the report of the Keeper of Cotton Marks thereon, and unless the Registrar, after considering the report and hearing, if so required, the applicant, within the prescribed time gives notice to the Keeper of Cotton Marks of objection to the acceptance of the application, it shall be advertised by the Manchester Branch and shall be proceeded with in the prescribed manner.

(5) If the Registrar gives notice of objection as aforesaid the application shall not be proceeded with, but any person aggrieved may in the prescribed manner appeal to the Court or the Board of Trade, at the option of the applicant.

(6) Upon the registration of a trade mark in the Manchester Register the Keeper of Cotton Marks shall upon notice thereof from the Registrar thereupon enter the mark in the duplicate of the Manchester Register, and such registration shall bear date as of the day of application to the Manchester Branch, and shall have the same effect as if the application had been made to the Registrar on that day.

(7) When any mark is removed from or any cancellation or correction made in the Manchester Register notice thereof shall

be given by the Registrar to the Keeper of Cotton Marks, who shall alter the duplicate register accordingly.

(8) For the purpose of all proceedings in relation to trade marks entered in the Manchester Register a certificate under the hand of the Keeper of Cotton Marks shall have the same effect as a certificate of the Registrar.

(9) In every application for registration of a cotton mark, if such mark has been used by the applicant or his predecessors in business prior to the date of application, the length of time of such user shall be stated on the application.

(10) As from the passing of this Act—

(a) *In respect of cotton piece goods and cotton yarn no mark consisting of a word or words alone (whether invented or otherwise) shall be registered, and no word or words shall be deemed to be distinctive in respect of such goods (a):*

(b) In respect of cotton piece goods no mark consisting of a line heading alone shall be registered and no line heading shall be deemed to be distinctive in respect of such goods:

(c) No registration of a cotton mark [in respect of cotton piece goods or cotton yarns] (*b*) shall give any exclusive right to the use of any *word* (*a*), letter, numeral, line heading, or any combination thereof.

(11) The right of inspection of the Manchester Register shall extend to and include the right to inspect all applications whatsoever that have been since the passing of the Trade Marks Registration Act, 1875, and hereafter shall have been made to the Manchester Branch in respect of cotton goods in classes 23, 24, and 25, whether registered, refused, lapsed, expired, withdrawn, abandoned, cancelled, or pending.

39 & 40 Vict. c. 33.

(12) The Keeper of Cotton Marks shall, on request, and on production of a facsimile of the mark, and on payment of the prescribed fee, issue a certified copy of the application for registration of any cotton mark, setting forth in such certificate the length of time of user (if any) of such mark as stated on the application, and any other particulars he may deem necessary

(13) As regards any rules or forms affecting cotton marks which are proposed by the Board of Trade to be made, the draft of the same shall be sent to the Keeper of Cotton Marks and also to

the Manchester Chamber of Commerce. And the said Keeper, and also the said Chamber, shall, if they or either of them so request, be entitled to be heard by the Board of Trade upon such proposed rules before the same are carried into effect.

(14) The existing practice whereby the keeper of the Manchester Branch consults the Trade and Merchandise Marks Committee appointed by the Manchester Chamber of Commerce upon questions of novelty or difficulty arising on applications to register cotton marks shall be continued by the Keeper of Cotton Marks.

This was a new section in 1905. For procedure, see Rules 110—121.

(*a*) The words in italics were repealed by sect. 12 of the Act of 1919: see p. 115.

(*b*) The words in square brackets were inserted by the Trade Marks Act, 1914: see p. 126.

In consequence of sub-sect. 10 (c), marks which consist substantially only of the particulars therein enumerated are refused registration in Part A. for the cotton goods mentioned. It would appear that the sub-section need not affect applications in Part B.

International and Colonial Arrangements.

International and Colonial arrangements. 48 & 49 Vict. c. 63.

65. The provisions of sections one hundred and three and one hundred and four of the Patents, Designs, and Trade Marks Act, 1883 (as amended by the Patents, Designs, and Trade Marks (Amendment) Act, 1885) (*a*), relating to the registration of trade marks both as enacted in such Acts and as applied by any Order in Council made thereunder, shall be construed as applying to trade marks registrable under this Act.

(*a*) Sect. 91 of the Patents and Designs Act, 1907, as amended by sect. 20 of the Patents and Designs Act, 1919, has now been substituted for sects. 103—4 of the Act of 1883—5.

As to International and Colonial arrangements, see p. 175.

Offences.

Falsification of entries in register.

66. If any person makes or causes to be made a false entry in the register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanor.

This section comes from sect. 93 of the Act of 1883.

Penalty on falsely representing a trade mark as registered.

67.—(1) Any person who represents a trade mark as registered which is not so, shall be liable for every offence on summary conviction to a fine not exceeding five pounds.

(2) A person shall be deemed, for the purposes of this enactment, to represent that a trade mark is registered, if he uses in connection with the trade mark the word "registered," or any words expressing or implying that registration has been obtained for the trade mark.

This section comes from sect. 105 of the Act of 1883.

The words "trade mark" alone do not import that the mark is registered, and their use would not therefore constitute an offence: see *Sen Sen Co.* v. *Britten* (1899), 16 R. P. C. 137; *Royal Baking Powder Co.* v. *Wright, Crossley & Co.* (1901), 18 R. P. C. 95.

As to criminal offences in connection with trade marks and other indications of origin, &c., see Merchandise Marks Act, 1887.

As to false statements with respect to patents and designs, see sect. 89 of the Patents and Designs Act, 1907.

Royal Arms.

Unauthorised assumption of Royal Arms.

68. If any person, without the authority of His Majesty, uses in connexion with any trade, business, calling, or profession, the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised so to use the Royal Arms, or if any person without the authority of His Majesty or of a member of the Royal Family, uses in connexion with any trade, business, calling, or profession any device, emblem, or title in such manner as to be calculated to lead to the belief that he is employed by or supplies goods to His Majesty or such member of the Royal Family, he may, at the suit of any person who is authorised to use such arms or such device, emblem, or title, or is authorised by the Lord Chamberlain to take proceedings in that behalf, be restrained by injunction or interdict from continuing so to use the same: Provided that nothing in this section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing any such arms, device, emblem, or title to continue to use such trade mark.

This was a new section in the Act of 1905, extending the provisions of sect. 106 of the Act of 1883. Similar, but extended, provisions are now contained in sect. 90 of the Patents and Designs Act, 1907: see p. 121.

Injunctions have been obtained by the Royal Warrant Holders'

Association in a number of cases: *Royal Warrant Holders' Association* v. *Slade* (1908), 25 R. P. C. 245; *Royal, &c.* v. *Kitson* (1909), 26 R. P. C. 157; *Royal, &c.* v. *Deane & Beal* (1911), 28 R. P. C. 721; *Royal, &c.* v. *Matthews* (1915), 32 R. P. C. 81; *Royal, &c.* v. *Boguslavsky, ibid.* 83; *Royal, &c.* v. *Sullivan,* (1914) 1 Ir. 236. The question whether the association or any of its members were persons aggrieved so as to have a *locus standi* to apply for rectification under sect. 35, was discussed in *Imperial Tobacco Co.'s T. Ms.* (1915), 32 R. P. C. 361, but the decision was given on the ground that the marks in question were not calculated to deceive.

Prior to the Act of 1905, it had been the practice to refuse marks of this character, and as to cases not covered by the section, see Rules 11—13. In *Koenig* v. *Ebhardt's T. M.* (1896), 13 R. P. C. 451, the validity of any office rule, apart from an exercise of discretion in each particular case, was questioned; the mark in that case was held not to resemble a royal crown. As to the word "royal," see *Royal Worcester Corset Co.'s Appn.* (1909), 26 R. P. C. 185, and *Carron Co.'s Appn.* (1910), 27 R. P. C. 412; *Royal Baking Powder Co.'s Appn.* (1902), 19 R. P. C. 261.

Courts.

General saving for jurisdiction of Courts.

69. The provisions of this Act conferring a special jurisdiction on the Court as defined by this Act shall not, except so far as the jurisdiction extends, affect the jurisdiction of any Court in Scotland or Ireland in any proceedings relating to trade marks; and with reference to any such proceedings in Scotland the term "the Court" shall mean the Court of Session; and with reference to any such proceedings in Ireland the term "the Court" shall mean the High Court of Justice in Ireland.

Isle of Man.

70. This Act shall extend to the Isle of Man, and—

(1) Nothing in this Act shall affect the jurisdiction of the Courts in the Isle of Man in proceedings for infringement or in any action or proceeding respecting a trade mark competent to those Courts:

(2) The punishment for a misdemeanor under this Act in the Isle of Man shall be imprisonment for any term not exceeding two years, with or without hard labour and with or without a fine not exceeding one hundred pounds, at the discretion of the Court:

(3) Any offence under this Act committed in the Isle of Man which would in England be punishable on summary conviction may be prosecuted, and any fine in respect thereof recovered at the instance of any person aggrieved, in the manner in which offences punishable on summary conviction may for the time being be prosecuted.

Jurisdiction of Lancashire Palatine Court.

71. The Court of Chancery of the County Palatine of Lancaster shall, with respect to any action or other proceeding in relation to trade marks, the registration whereof is applied for in the Manchester Branch, have the like jurisdiction under this Act as His Majesty's High Court of Justice in England, and the expression "the Court" in this Act shall be construed and have effect accordingly:

Provided that every decision of the Court of Chancery of the County Palatine of Lancaster in pursuance of this section shall be subject to the like appeal as decisions of that Court in other cases.

72. In Scotland any offence under this Act declared to be punishable on summary conviction may be prosecuted in the Sheriff Court.

Sects. 69—72 relate to the jurisdiction of Courts other than the High Court in England, and are derived, with modifications, from sects. 108, 111, 112, 112A of the Act of 1883.

The expression "the Court" is defined in sect. 3 of the Act of 1905 as meaning "(subject to the provisions for Scotland, Ireland and the Isle of Man) His Majesty's High Court of Justice in England." The effect of this definition, when read with sect. 69, is not easily determined. Under the corresponding, though not identical, provisions of the Act of 1883, it was held: (1) by the English High Court, in *King's T. M.* (1892), 9 R. P. C. 350, that that Court had jurisdiction to remove a mark of which the registered proprietor was domiciled in Ireland, no opinion being expressed as to whether the Irish Courts had concurrent jurisdiction; (2) by the Irish Court, in *Bayer* v. *Connell* (1893), 16 R. P. C. 157, that there was no jurisdiction in that Court to rectify the register; (3) by the Scotch Court of Session, in *Dewar* v. *Dewar* (1900), 17 R. P. C. 341, that the Scotch Court had jurisdiction to decide between parties domiciled in Scotland the question whether a trade mark was rightly registered, and that under sect. 111 (2) of the Act of 1883, the effect of a decision that the mark was not rightly registered was that the Comptroller was required to expunge the entry. In the latter case the question whether the Court could entertain a petition to expunge under sect. 90 was left open, though in *Cowie* v. *Herbert* (1897), 14 R. P. C. 436, the Lord Ordinary had entertained such a proceeding. *Dewar* v. *Dewar* was followed in *Dawson* v. *Stewart* (1905), 22 R. P. C. p. 253, and *Reid* v. *Thomson, ibid.* p. 379.

In the Act of 1905, sect. 111 (2) of the Act of 1883 is not reproduced, except partially in sect. 35 (4), and consequently the *ratio decidendi* in *Dewar* v. *Dewar*, so far as it decides that rectification is the necessary consequence of the decision of a Scotch Court that a registration is not valid, is no longer applicable. But in *Boord* v. *Thom & Cameron* (1907), 24 R. P. C. 697, where proceedings were begun before, and decided after, the passing of the Act of 1905,

Dewar v. *Dewar* was assumed, without argument, to be still authoritative, and the former case was treated as settling the law under the Act of 1905 in *Walter* v. *Kego* (No. 1) (1921), 38 R. P. C. 25, but no attention was drawn to the altered language of the Act of 1905. The question whether the Scotch or Irish Courts have jurisdiction to entertain applications under sect. 35 cannot therefore be regarded as finally determined.

Repeal; Savings.

Repeal and saving for rules, &c.

*73. The enactments described in the schedule to this Act are repealed to the extent mentioned in the third column, but this repeal shall not affect any rule, table of fees, or classification of goods made under any enactment so repealed, but every such rule, table of fees, or classification of goods shall continue in force as if made under this Act until superseded by rules, tables of fees, or classification under this Act.

Application of 46 & 47 Vict. c. 57, ss. 82—84.

74. The provisions of sections eighty-two to eighty-four of the Patents, Designs, and Trade Marks Act, 1883, as amended by any subsequent enactment, shall continue to apply with respect to the administration at the Patent Office of the Law relating to the registration of trade marks, and shall accordingly be construed as if this Act formed part of that Act.

SCHEDULE. Sect. 73.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
46 & 47 Vict. c. 57.	The Patents, Designs, and Trade Marks Act, 1883.	Sections sixty-two to eighty-one, and, so far as they respectively relate to trade marks, sections eighty-five to ninety-nine, one hundred and one, one hundred and two, one hundred and five, one hundred and eight, and one hundred and eleven to one hundred and seventeen.
51 & 52 Vict. c. 50.	The Patents, Designs, and Trade Marks Act, 1888.	Sections eight to twenty, and, so far as they respectively relate to trade marks, sections twenty-one to twenty-six.

The effect of this repeal is that the whole of the part of the Act of 1883 devoted exclusively to trade marks is repealed, and that, of the general part of the Act, the only sections left unrepealed which

affected trade marks were sects. 82 to 84 (relating to administration of the Patent Office), sects. 103 and 104 (relating to International and Colonial arrangements), and sect. 106 (relating to the Royal Arms, &c.).

Sects. 82 to 84 of the Act of 1883 have since been replaced by sects. 62 to 64 of the Patents and Designs Act, 1907, sects. 103 and 104 by sects. 91 and 88 of that Act, and sect. 106 by sect. 90 of that Act.

Sect. 91 of the Patents and Designs Act, 1907, has been amended by sect. 20 of the Patents and Designs Act, 1919. See p. 123.

TRADE MARKS ACT, 1919.

[9 & 10 GEO. 5, c. 79.]

An Act to amend the Trade Marks Act, 1905.

[23rd December, 1919.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.

REGISTRATION OF CERTAIN TRADE MARKS NOT REGISTRABLE UNDER PRINCIPAL ACT.

Division of register of trade marks into two parts. 5 Edw. 7, c. 15.

1.—(1) The register of trade marks (including the Manchester Register) kept under the Trade Marks Act, 1905 (hereinafter referred to as the principal Act), shall be divided into two parts to be called respectively Part A. and Part B. (*a*).

(2) Part A. of the register shall comprise all trade marks entered in the register of trade marks at the commencement of this Act and all trade marks which after the commencement of this Act may be registered under the provisions of the principal Act (*b*).

(3) Part B. shall comprise all trade marks registered under this Part of this Act, and all trade marks entered on or removed thereto under this Act (*c*).

(*a*) Register of trade marks: see sects. 4—7 of the principal Act; Manchester Branch Register, *ibid.* s. 64. The Sheffield Register forms part of the register: *ibid.* s. 63.

(*b*) Part III. of the Act of 1919 makes certain amendments to the Act of 1905, some of which, *e.g.*, sect. 7, affect the question of

registrability; consequently the expression "provisions of the principal Act" in this sub-section must include the provisions of the Act of 1905, as amended by the Act of 1919.

(*c*) Provision for removal from Part A. to Part B. is made by sect. 9 (3).

Registration of trade marks in Part B.

2.—(1) Where any mark has for not less than two years been bonâ fide used in the United Kingdom upon or in connection with any goods (whether for sale in the United Kingdom or exportation abroad), for the purpose of indicating that they are the goods of the proprietor of the mark by virtue of manufacture, selection, certification, dealing with or offering for sale (*a*), the person claiming to be the proprietor of the mark may apply in writing to the registrar in the prescribed manner (*b*) to have the mark entered as his registered trade mark in Part B. of the register in respect of such goods.

(*a*) Compare the words of the definition contained in sect. 3 of the Act of 1905, and see notes to that section. A mark may be used in the United Kingdom, although the proprietor has no actual place of business there, if the goods are sold by a third party under the mark for the purpose mentioned: cf. *Magnolia Metal Co.'s T. M.* (1897), 14 R. P. C. p. 628; and in relation to the reputation attaching to trade names, *Panhard* v. *Panhard* (1901), 18 R. P. C. 405; *Poiret* v. *Poiret* (1920), 37 R. P. C. p. 187.

The two years' user is a condition precedent to application. It does not necessarily give rise to a right to registration: see sub-sect. 2.

(*b*) As to procedure, see Rules 16 *et seq.* and 35.

(2) The registrar shall consider every such application for registration of a trade mark in Part B. of the register, and if it appears to him, after such search, if any, as he may deem necessary, that the application is inconsistent with the provisions of section eleven or section nineteen of the principal Act, or if he is not satisfied that the mark has been so used as aforesaid, or that it is capable of distinguishing (*a*) the goods of the applicant, he may (*b*) refuse the application, or may accept it subject to conditions (*c*), amendments or modifications as to the goods or classes of goods in respect of which the mark is to be registered, or to such limitations, if any, as to mode or place of user or otherwise as he may think right to impose, and in any other case he shall accept the application (*d*).

(*a*) In considering the expression "adapted to distinguish" in sect. 9 of the Act of 1905, the Courts have taken the view that there are some words, such as "best," which are incapable of dis-

tinguishing the goods of one trader from those of another: see *Crosfield's Appn.* (1909), 26 R. P. C. 837, and other cases cited at p. 51.

(*b*) Sects. 11 and 19 of the Act of 1905 are applicable to registration under this part of the Act: see sect. 3. Consequently, in the case of applications inconsistent with either of those sections, the Registrar not only *may*, but *must*, refuse the application unless the conditions, amendments, &c. next mentioned enable the registration to be made consistently with both sections.

(*c*) The provision as to conditions and limitations, &c. is similar to those contained in sect. 12 and elsewhere in the Act of 1905. Sect. 15 of that Act as to disclaimers does not apply.

(*d*) Contrast this with sect. 12 (2) of the Act of 1905, where there is no express obligation to accept a mark: see *Egg Products Ltd.'s Appn.* (1922), 39 R. P. C. 155.

(3) Every such application shall be accompanied by a statutory declaration (*a*) verifying the user, including the date of first user, and such date shall be entered on the register.

(4) Any such refusal or conditional acceptance shall be subject to appeal to the Court, and, if the ground for refusal is insufficiency of evidence as to user, such refusal shall be without prejudice to any application for registration of the trade mark under the provisions of the principal Act (*b*).

(5) Every such application shall, if accepted, be advertised in accordance with the provisions of the principal Act (*c*).

(6) A mark may be registered in Part B. notwithstanding any registration in Part A. by the same proprietor of the same mark or any part or parts thereof (*d*).

(*a*) See sect. 49 and Rules 102, 103.

(*b*) Applications under the Act of 1905, except in the case of certain marks mentioned in sect. 9 (5), may be granted without evidence of user, and even in the latter case no length of user is specified. There could not therefore be any suggestion as to *res judicata* in the case covered by this sub-section. Where the question was one of similarity to existing marks, there might be a case of *res judicata*: see *Massachusetts Co.'s Appn.* (1918), 35 R. P. C. 137.

(*c*) This follows from sect. 13 of the Act of 1905, which applies to Part B.: see sect. 3 of the Act of 1919. As to procedure, see Rules 41—44. After advertisement there is an opportunity for opposition: see sect. 14 of the Act of 1905.

(*d*) In this case association cannot be required as under the Act of 1905, sects. 24, 25 and 27 of that Act not being applicable.

Application of certain provisions of principal Act to Part B. trade marks.

3. The provisions of the principal Act, as amended by this Act, with the exception of those set out in the First Schedule (*a*) to this Act, shall, subject to the provisions of this Part of this Act, apply in respect of trade marks to which this Part of this Act

applies as if they were herein re-enacted and in terms made applicable to this Part of this Act.

(*a*) The first schedule is as follows:—

PROVISIONS OF PRINCIPAL ACT NOT APPLIED.

No. of Section.	Subject-matter.
1	Short title
2	Commencement of Act.
6	Incorporation of existing register.
9	Registrable trade marks.
12	Application for registration.
14 (9)	Modification of trade mark on appeals.
15	Disclaimers.
24	Associated trade marks.
25	Combined trade marks.
27	Assignment and user of associated trade marks.
31	Status of unrenewed trade marks.
36	Trade marks registered under previous Acts.
39 (except proviso)	Rights of proprietor of trade mark.
41 down to the words "against the provisions "of section eleven of "this Act."	Registration to be conclusive after seven years.
42	Unregistered trade mark.
62	Standardization, &c., trade marks.
73	Repeal and saving for rules, &c.

Of the sections not applied, those which are most material are sects. 9, 39 and 41.

One of the objects of the introduction of registrations under Part B. was to obviate a difficulty experienced by British traders in certain foreign countries where registration of a trade mark could not be obtained unless the mark was already registered in the country of origin. The result of this was that a British trader might have a trade mark well known in a foreign country, but be unable to register it owing to the mark not being registrable in the United Kingdom, while an unscrupulous competitor in a foreign country, not being under a similar disability under the law of his country, might step in and oust the British trader by obtaining registration.

It appears, however, to have been considered desirable not to eliminate the safeguards contained in the Act of 1905 against the risk of indiscriminate monopolisation of marks. Consequently, the most important rights secured by the provisions of sects. 39 and 41 were materially modified in regard to the effect of registration in Part B. For the rights conferred by sect. 39 there are substituted the less valuable rights conferred by sect. 4 of the Act of 1919, and the provisions of sect. 41, restricting the grounds upon which the validity of the original registration can be attacked after the lapse of seven years, are not applied to registrations in Part B.

The other excepted sections are either inapplicable or of minor importance.

Effect of registration in Part B.

4. The registration of a person as the proprietor of a trade mark in Part B. of the register shall be primâ facie evidence that that person has the exclusive right to the use of that trade mark (*a*), but, in any action for infringement of a trade mark entered in Part B. of the register, no injunction, interdict or other relief shall be granted to the owner of the trade mark in respect of such registration, if the defendant establishes to the satisfaction of the Court that the user of which the plaintiff complains is not calculated to deceive (*b*) or to lead to the belief that the goods the subject of such user were goods manufactured, selected, certified, dealt with or offered for sale by the proprietor of the trade mark.

(*a*) This section does not, as does sect. 39 of the Act of 1905, bring into existence a statutory right materially different from that recognised by the Common Law or Equity. It shifts the onus of proof in favour of the proprietor of a mark registered in Part B., in regard to a claim to the exclusive right which, before the Registration Acts, a trader could have established by proving that the trade mark was in fact distinctive of his goods. Its effect is to facilitate an action for infringement in this country in cases where previously an application and refusal of registration under the Act of 1905 would have been necessary (see sect. 42), and it may also facilitate registration abroad of marks not registrable in Part A.

The words down to note (*a*) correspond with the first part of sect. 76 of the Act of 1883 and sect. 3 of the Act of 1875. As to the construction of such words, reference may be made to cases decided under those Acts: *e.g.*, *Palmer's T. M.* (1882), 21 Ch. D. at p. 57; *Pinto* v. *Badman* (1891), 8 R. P. C. 181; *Bow* v. *Hart* (1905), 22 R. P. C. 222. Under this section a defendant, even if he has used a mark identical with the plaintiff's, may succeed without an application to expunge the entry, but where validity is in effect challenged, it will probably be advisable to apply for rectification.

(*b*) The effect of requiring a defendant to prove that his user is not calculated to deceive, as well as not calculated to lead to the belief, &c., is not very clear. Normally, proof of the latter alone would negative the plaintiff's right to relief.

As to the meaning of "calculated to deceive," see notes to sect. 11.

Power to treat applications for registration in Part A. as applications for registration in Part B.

5. If any person applies for the registration of a trade mark under the principal Act in Part A. of the register, the registrar may, if the applicant is willing, instead of refusing the application, treat it as an application for registration in Part B. of the register under this Part of this Act and deal with the application accordingly.

This section does not in terms give a similar power to the Court, but the power here conferred is discretionary, and sect. 8 (2) may be

construed as conferring the same power upon the Court. If, however, the Registrar objected, it might be held that an application to register in Part B., not being the subject-matter of the appeal before the Court, could not be dealt with.

PART II.

PROVISIONS FOR THE PREVENTION OF ABUSES OF TRADE MARKS.

Removal from register of word trade marks used as names of articles.

6.—(1) Where in the case of an article or substance manufactured under any patent in force at or granted after the passing of this Act, a word trade mark registered under the principal Act or Part I. of this Act is the name (*a*) or only practicable name (*b*) of the article or substance so manufactured, all rights to the exclusive use of such trade mark, whether under the common law (*c*) or by registration (and notwithstanding the provisions of section forty-one of the principal Act), shall cease upon the expiration or determination of the patent, and thereafter such word shall not be deemed a distinctive mark, and may be removed by the Court from the register on the application of any person aggrieved (*d*).

(2) (*e*) No word which is the only practicable (*f*) name or description of any single chemical element or single chemical compound, as distinguished from a mixture, shall be registered as a trade mark, and any such word now or hereafter on the register may, notwithstanding section forty-one of the principal Act, be removed by the Court from the register on the application of any person aggrieved:

Provided that—

(a) the provisions of this subsection shall not apply where the mark is used to denote only the proprietor's brand or make of such substance, as distinguished from the substance as made by others, and in association with a suitable and practicable name open to the public use (*g*); and

(b) in the case of marks registered before the passing of this Act, no application under this section for the removal of the mark from the register shall be entertained until after the expiration of four years from the passing of this Act (*h*).

(3) The power to remove a trade mark from the register conferred by this section shall be in addition to and not in derogation of any other powers of the Court in respect of the removal of trade marks from the register.

(4) The provisions contained in Part III. of this Act authorising applications for the rectification of the register to be made in the first instance to the registrar instead of to the Court shall apply to applications under this section (*i*).

If application is made to register a word which is understood by the public as the mere name for an article, whether patented or not, registration will be refused: see *Gramophone Co.'s Appn.* (1910), 27 R. P. C. 689; *Williams' Appn.* (1917), 34 R. P. C. 197, and notes, pp. 17, 55, *ante*. If such registration were allowed, the trade might be hampered by being unable to sell the same article made by other manufacturers under the name habitually used by purchasers intending to use it only as a mere description of the article; and so long as the name was registered, the proprietor might in effect acquire something approaching a monopoly in the manufacture of the article.

Sect. 6 of the Act of 1919 points to the possibility of a word mark getting on to the register, either because at the time it was not yet recognised by the public as the mere name for the article, or because the facts were not fully known. Difficulty might then be experienced in removing such a mark after the lapse of seven years from the date of registration, having regard to the terms of sect. 41 of the Act of 1905. The new section provides a remedy in certain specific cases, but it should not therefore be assumed that, but for this section, there was no remedy either in these or other similar cases. That question may still have to be determined: see notes to sect. 41, p. 85, *ante*.

The particular cases dealt with by the section are probably the most important instances of what the heading to the section characterises as "abuses of trade marks." Thus, during the currency of a patent it might be difficult to question the validity of the registration while the article in question was made by only one manufacturer, and, in the absence of competitors, no one might have a sufficient incentive to do so. Similarly, the production of a chemical element or compound is often the subject of a secret process which effectually keeps competitors out of the field. In either case, when the manufacture became open to others, registration might have the effect of interfering with the trade as mentioned above.

(*a*) *The* name must here mean the *only* name.

(*b*) "Practicable" in this context should probably be understood with reference to the requirements of the public at the time. A difficult scientific description would probably not be regarded as a "practicable" name.

(*c*) This is in appearance a marked departure from the policy of sect. 45 of the Act of 1905, but as it would have been practically impossible at common law to establish any exclusive right to the only practicable name of an article formerly patented, it does not effect any serious change in the law: see, for example, *Linoleum Co.* v. *Nairn* (1878), 7 Ch. D. 834; and pp. 17, 18, *ante*.

The section would not interfere with a common law action in which the plaintiff's case rested, not on a claim to an exclusive right to the name, but on the use by the defendant of the name coupled with some additional circumstance calculated to deceive. In such a case the cause of action would arise, not from the use of the name, but from the combination of circumstances.

(*d*) As to "person aggrieved," see note (*c*), p. 81.

As to the procedure on such an application to the Court, see notes to sect. 35 of the Act of 1905, p. 80; and on applications to the Registrar as provided for by sub-sect. (4), see sect. 9 of the Act of 1919.

(*e*) Sub-sect. (2) is not confined to the case of patented articles.

(*f*) "Practicable" qualifies both "name" and "description"; and see note (*b*), above.

(*g*) As proviso (a) presupposes the existence of a practicable name other than the word trade mark, the proviso may be redundant. Possibly it is intended to make it clear that, in the case referred to, the registration is not to be expunged under the section on the argument that the word trade mark is still "the name" for the article because the public has not chosen to adopt the alternative suggested by the proprietor.

(*h*) The Act was passed on 23rd December, 1919.

(*i*) See sect. 9 of this Act and sect. 35 of the Act of 1905.

Part III.

General Amendments of Principal Act.

Amendment of the law as to registrable trade marks.

7. In paragraph (5) of section nine of the principal Act (which defines the particulars which registrable trade marks must contain or consist of) for the words "except by order of the Board of Trade or the Court be deemed a distinctive mark," there shall be substituted the words "be registrable under the provisions of this paragraph, except upon evidence of its distinctiveness."

See notes to sect. 9 of the Act of 1905.

Appeals.

8.—(1) All appeals from the decisions of the registrar under section fourteen of the principal Act shall be made to the Court, and an appeal shall not lie from any such decision to the Board of Trade, and accordingly that section shall have effect, subject to the modifications set forth in the Second Schedule to this Act:

Provided that nothing in this subsection shall affect any appeal which may be pending at the commencement of this Act.

(2) In any appeal from the decision of the registrar to the Court under the principal Act or this Act the Court shall have

and exercise the same discretionary powers as under the principal Act or this Act are conferred upon the registrar.

Sect. 14 of the Act of 1905 relates to proceedings on opposition to an application to register.

It should be observed that sect. 8 (2) is not confined to decisions on applications to register, though it was probably passed mainly to remove any doubts as to the freedom of the Court in this respect: see notes, p. 63, and *Diamond T. Motor Co.'s Appn.* (1921), 38 R. P. C. 373.

Rectification of register.

9.—(1) Any application for the rectification of the register or the removal of any trade mark from the register in respect of any goods which, under section thirty-five or section thirty-seven of the principal Act or under Part II. of this Act, is to be made to the Court, may, at the option of the applicant, be made in the first instance to the registrar (*a*):

Provided that no such application shall be made otherwise than to the Court where an action concerning the trade mark in question is pending.

(2) The registrar may, at any stage of the proceedings, refer any such application to the Court or he may, after hearing the parties, determine the question between them, subject to appeal to the Court.

(3) In any proceedings for the rectification of the register under this Act or under section thirty-five of the principal Act as amended by this section the Court or the registrar shall, in addition to the powers conferred by that section as so amended, have power to direct a trade mark entered in Part A. of the register to be removed to Part B. of the register (*b*).

(*a*) As to procedure on applications under this section, see Rules 90—92. Rules 47—56, which are applied *mutatis mutandis*, relate to opposition to registration. In applying these rules, the word "applicant" must be understood as referring to the registered proprietor, and the word "opponent" as referring to the applicant to rectify.

As to procedure on appeals, see Rule 122.

In simple cases the procedure allowed by this section will probably be convenient and less expensive, but where there is a serious contest of fact, so that discovery or cross-examination may be required, it will be more satisfactory to apply to the Court at once under sect. 35.

(*b*) Such an order would be appropriate, when the only objection to the mark is that it is not a registrable trade mark within the categories enumerated in sect. 9 of the Act of 1905.

Costs.

10. In all proceedings before the registrar under the principal Act or this Act the registrar shall have power to award to any

party such costs as he may consider reasonable, and to direct how and by what parties they are to be paid, and any such order may be made a rule of Court.

As to costs generally, see p. 90, *ante*.

11. For section thirty-three of the principal Act, the following section shall be substituted:—

Registration of assignments.

"33.—(1) Where a person becomes entitled by assignment, transmission, or other operation of law to a registered trade mark, he shall make application to the registrar to register his title, and the registrar shall, on receipt of such application and on proof of title to his satisfaction, register him as the proprietor of the trade mark, and shall cause an entry to be made in the prescribed manner on the register of the assignment, transmission, or other instrument affecting the title. Any decision of the registrar under this section shall be subject to appeal to the Court.

"(2) Except in cases of appeals under this section and applications made under section thirty-five of this Act, a document or instrument in respect of which no entry has been made in the register in accordance with the provisions of subsection (1) aforesaid shall not be admitted in evidence in any Court in proof of the title to a trade mark unless the Court otherwise directs."

For notes to this section, see sect. 33 of the Act of 1905, p. 78.

12. The amendments specified in the second column of the Second Schedule to this Act, which relate to minor details, shall be made in the provisions of the principal Act specified in the first column of that schedule.

Minor amendments of principal Act.

The amendments effected by this section are incorporated in the text of the Act of 1905, new words being printed in square brackets, the repealed words being shown in italics.

13.—(1) This Act may be cited as the Trade Marks Act, 1919, and the Trade Marks Acts, 1905 and 1914, and so much of the Patents and Designs Acts, 1907 to 1919, as relates to trade marks (*a*), and this Act may be cited together as the Trade Marks Acts, 1905 to 1919.

Short title, construction and commencement.

(2) This Act shall be construed as one with the principal Act and shall come into operation on the first day of April nineteen hundred and twenty.

(*a*) As to the sections of the Patents and Designs Act, 1907, which are applicable, see notes to sect. 74 of the Act of 1905. The relevant sections are printed in Appendix A.

SCHEDULES.

Sect. 3

FIRST SCHEDULE.

PROVISIONS OF PRINCIPAL ACT NOT APPLIED.

No. of Section.	Subject-matter.
1	Short title.
2	Commencement of Act.
6	Incorporation of existing register.
9	Registrable trade marks.
12	Application for registration.
14 (9)	Modification of trade mark on appeals.
15	Disclaimers.
24	Associated trade marks.
25	Combined trade marks.
27	Assignment and user of associated trade marks.
31	Status of unrenewed trade marks.
36	Trade marks registered under previous Acts.
39 (except proviso)	Rights of proprietor of trade mark.
41 down to the words "against the provisions "of section eleven of "this Act."	Registration to be conclusive after seven years.
42	Unregistered trade mark.
62	Standardization, &c., trade marks.
73	Repeal and saving for rules, &c.

Sects. 8 and 12.

SECOND SCHEDULE.

MINOR AMENDMENTS OF PRINCIPAL ACT.

Section Amended.	Nature of Amendment.
Section 12.....	At the end of subsection (2) there shall be inserted the following words "or to such limitations, if any, as to mode or place of user or otherwise as he may think right to impose." In subsection (4), after the words "modifications, if any," shall be inserted the words "or to what limitations, if any, as to mode or place of user or otherwise."
Section 13.....	After the word "conditions" in both places where it occurs, there shall be inserted the words "and limitations." At the end of the section there shall be inserted the words "Provided that an application under the provisions of subsection (5) of section nine of this Act may be advertised by the registrar on receipt of such application and before acceptance."
Section 14.....	In subsection (4), after the word "conditions" there shall be inserted the following words "or what limitations as to mode or place of user or otherwise." In subsection (5) the words "or with the consent of the parties to the Board of Trade" shall be repealed. In subsection (6) the words "the Board of Trade or" and "as the case may be" shall be repealed; and after the

Section Amended.	Nature of Amendment.
	words "conditions, if any" there shall be inserted the words "or what limitations, if any, as to mode or place of user or otherwise."
	Subsection (10) shall be repealed.
Section 16.....	After the words "the registrar shall" there shall be inserted the words "unless the mark has been accepted in error or."
Section 21.....	After the word "court" there shall be inserted the words "or registrar" in each case.
	Delete the words "as it may think it right to impose" and insert "as the court or the registrar, as the case may be, may think it right to impose."
Section 22.....	At the end of the section there shall be added the following words "and the assignment of such right to use the same shall constitute the assignee a proprietor of a separate trade mark for the purpose of section twenty-one of this Act, subject to such conditions and limitations as may be imposed under that section."
Section 23.....	After the words "modifications, if any," there shall be inserted the words "and to such limitations, if any, as to mode or place of user."
Section 24.....	After the words "registration of a trade mark" there shall be inserted the words "identical with or."
Section 34.....	After the word "terms" there shall be inserted the words "and subject to such limitations as to mode or place of user."
Section 41.....	In the proviso, after the words "anterior to the user" there shall be inserted the words "or registration, whichever is the earlier."
Section 43.....	For section forty-three the following section shall be substituted: "In any action or proceeding relating to a trade mark or trade name the tribunal shall admit evidence of the usages of the trade concerned and of any relevant trade mark or trade name or get up legitimately used by other persons."
Section 62.....	For the words "Where any association or person undertakes the examination of any goods in respect of origin, material, mode of manufacture, quality, accuracy or other characteristic, and certifies the result of such examination by mark used upon or in connection with such goods, the Board of Trade may, if they shall judge it to be to the public advantage, permit such association or person to register such mark as a trade mark in respect of such goods whether or not such association or person be a trading association or trader or possessed of a goodwill in connection with such examination and certifying," there shall be substituted the words "Where any association or person undertakes to certify the origin, material, mode of manufacture, quality, accuracy or other characteristic of any goods by mark used upon or in connection with such goods, the Board of Trade, if and so long as they are satisfied that such association or person is competent to certify as aforesaid, may, if they shall judge it to be to the public advantage, permit such association or person to register such mark as a trade mark in respect of such goods, whether or not such association or person be a trading association or trader or possessed of a goodwill in connection with such certifying."
Section 64.....	Subsection (10) (a) shall be repealed. In subsection (10) (c) the word "word" shall be omitted.

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APPENDIX A.

PATENTS AND DESIGNS ACT, 1907.

(7 Edw. 7, c. 29.)

(As amended by the Patents and Designs Acts, 1914 and 1919.)

PART I.—PATENTS.

PART II.—DESIGNS.

PART III.—GENERAL.

Patent Office and Proceedings thereat.

Patent Office. 5 Edw. 7, c. 15.

62.—(1) The Treasury may continue to provide for the purposes of this Act and the Trade Marks Act, 1905, an office with all requisite buildings and conveniences, which shall be called, and is in this Act referred to as, the Patent Office.

(2) The Patent Office shall be under the immediate control of the comptroller, who shall act under the superintendence and direction of the Board of Trade.

(3) Any act or thing directed to be done by or to the comptroller may be done by or to any officer authorised by the Board of Trade.

(4) Rules under this Act may provide for the establishment of branch offices for designs at Manchester or elsewhere, and for any document or thing required by this Act to be sent to or done at the Patent Office being sent to or done at any branch office which may be established.

Officers and clerks.

63.—(1) There shall continue to be a comptroller-general of patents, designs, and trade marks, and the Board of Trade may, subject to the approval of the Treasury, appoint the comptroller, and so many examiners and other officers and clerks, with such designations and duties as the Board of Trade think fit, and may remove any of those officers and clerks.

(2) The salaries of those officers and clerks shall be appointed by the Board of Trade, with the concurrence of the Treasury, and those salaries and the other expenses of the execution of this Act and the Trade Marks Act, 1905, shall continue to be paid out of money provided by Parliament.

Seal of Patent Office.

64. Impressions of the seal of the Patent Office shall be judicially noticed and admitted in evidence.

* * * * *

76. The comptroller shall, before the first day of June in every year, cause a report respecting the execution by or under him of this Act to be laid before both Houses of Parliament, and therein shall include for the year to which the report relates all general rules made in that year under or for the purposes of this Act, and an account of all fees, salaries, and allowances, and other money received and paid under this Act. Annual reports of comptroller.

* * * * *

88. An Order in Council under this Act shall, from a date to be mentioned for the purpose in the Order, take effect as if it had been contained in this Act; but may be revoked or varied by a subsequent Order. Provision as to Order in Council.

Offences.

89.—(1) If any person makes or causes to be made a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanor. Offences.

(2) If any person falsely represents that any article sold by him is a patented article, or falsely describes any design applied to any article sold by him as registered, he shall be liable for every offence, on conviction under the Summary Jurisdiction Acts, to a fine not exceeding five pounds.

(3) If any person sells an article having stamped, engraved, or impressed thereon or otherwise applied thereto the word "patent," "patented," "registered," or any other word expressing or implying that the article is patented or that the design applied thereto is registered, he shall be deemed for the purposes of this section to represent that the article is a patented article or that the design applied thereto is a registered design.

(4) Any person who, after the copyright in a design has expired, puts or causes to be put on any article to which the design has been applied the word "registered," or any word or words implying that there is a subsisting copyright in the design, shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding five pounds.

(5) If any person uses on his place of business, or on any document issued by him, or otherwise, the words "Patent Office," or any other words suggesting that his place of business is officially connected with, or is, the Patent Office, he shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding twenty pounds.

90.—(1) The grant of a patent under this Act shall not be deemed to authorise the patentee to use the Royal Arms or to place the Royal Arms on any patented article. Unauthorised assumption of Royal Arms.

(2) If any person, without the authority of His Majesty, uses in connexion with any business, trade, calling, or profession the Royal Arms (or arms so nearly resembling them as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised to use the Royal Arms, he shall be liable on

conviction under the Summary Jurisdiction Acts to a fine not exceeding twenty pounds:

Provided that nothing in this section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing such arms to continue to use such trade mark.

Sects. 94 and 96 of this Act include provisions as to prosecution for offences in Scotland and the Isle of Man corresponding to sects. 70 and 72 of the Trade Marks Act, 1905.

International and Colonial Arrangements.

International and Colonial arrangements.

91.—(1) If His Majesty is pleased to make any arrangement with the government of any foreign state for mutual protection of inventions, or designs, or trade marks, then any person who has applied for protection for any invention, design, or trade mark in that state [or his legal representative or assignee] shall be entitled to a patent for his invention or to registration of his design or trade mark under this Act or the Trade Marks Act, 1905, in priority to other applicants; and the patent or registration shall have the same date as the date of the application in the foreign state.

Provided that—

(a) The application is made, in the case of a patent within twelve months, and in the case of a design or trade mark within four months, from the application for protection in the foreign state; and

(b) Nothing in this section shall entitle the patentee or proprietor of the design or trade mark to recover damages for infringements happening prior to the actual date on which his complete specification is accepted, or his design or trade mark is registered, in this country.

(2) The patent granted for the invention or the registration of a design or trade mark shall not be invalidated—

(a) in the case of a patent, by reason only of the publication of a description of, or use of, the invention; or

(b) in the case of a design, by reason only of the exhibition or use of, or the publication of a description or representation of, the design; or

(c) in the case of a trade mark, by reason only of the use of the trade mark,

in the United Kingdom or the Isle of Man during the period specified in this section as that within which the application may be made.

(3) The application for the grant of a patent, or the registration of a design, or the registration of a trade mark under this section, must be made in the same manner as an ordinary application under this Act or the Trade Marks Act, 1905: Provided that—

(a) In the case of patents the application shall be accompanied by a complete specification, which, if it is not accepted within the twelve months from the application for protection in the foreign state, shall with the drawings (if any) be open to public inspection at the expiration of that period; and

(b) In the case of trade marks, any trade mark the registration of which has been duly applied for in the country of origin may be registered under the Trade Marks Act, 1905.

(4) The provisions of this section shall apply only in the case of those foreign states with respect to which His Majesty by Order in Council declares them to be applicable, and so long only in the case of each state as the Order in Council continues in force with respect to that state.

(5) Where it is made to appear to His Majesty that the legislature of any British possession has made satisfactory provision for the protection of inventions, designs, and trade marks, patented [or] registered in this country, it shall be lawful for His Majesty, by Order in Council, to apply the provisions of this section to that possession, with such variations or additions, if any, as may be stated in the Order.

This section is derived from sects. 103 and 104 of the Act of 1883.

The words in brackets in sub-sect. (1) were added by sect. 1 of Patents and Designs Act, 1914 (4 & 5 Geo. 5, c. 18), in order to give effect to Art. 4 (a) of the Convention as revised at Washington.

The word "or" in sub-sect. (5) was substituted for "and" by sect. 20 of the Patents and Designs Act, 1919 (9 & 10 Geo. 5, c. 80).

As to extensions of the rights of priority under the treaties of peace, see Art. 308 of the treaty with Germany, and the Peace Order in Council, pp. 188, 204, *post*, and corresponding provisions in other peace treaties enumerated on p. 187.

* * * * *

Definitions.

93. In this Act, unless the context otherwise requires,—

* * * * *

"British possession" does not include the Isle of Man or the Channel Islands:

* * * * *

Repeal and savings.

98.—(1) The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule—

(a) As respects the enactments mentioned in Part I. of that schedule, as from the commencement of this Act;

* * * * *

Provided that this repeal shall not affect any convention, Order in Council, rule, or table of fees having effect under any enactment so repealed, but any such convention, Order in Council, rule, or table of fees in force at the commencement of this Act shall continue in force, and may be repealed, altered or amended, as if it had been made under this Act.

(2) Except where otherwise expressly provided, this Act shall extend to all patents granted and all designs registered before the commencement of this Act, and to applications then pending. in substitution for such enactments as would have applied thereto if this Act had not been passed.

Short title and commencement.

99. This Act may be cited as the Patents and Designs Act, 1907, and shall, save as otherwise expressly provided, come into operation on the first day of January one thousand nine hundred and eight.

* * * * *

[SECOND SCHEDULE.

Sect. 98.

SECOND SCHEDULE.

Enactments Repealed.

Part I.

Session and Chapter.	Short Title.	Extent of Repeal.
46 & 47 Vict. c. 57.	The Patents, Designs, and Trade Marks Act, 1883.	The whole Act, except subsections (5), (6), and (7) of section twenty-six, section twenty-nine, subsections (2) and (3) of section forty-seven, and section forty-eight.
48 & 49 Vict. c. 63.	The Patents, Designs, and Trade Marks (Amendment) Act, 1885.	The whole Act.
49 & 50 Vict. c. 37.	The Patents Act, 1886 - -	The whole Act.
51 & 52 Vict. c. 50.	The Patents, Designs, and Trade Marks Act, 1888.	The whole Act.
1 Edw. 7, c. 18.	The Patents Act, 1901 - -	The whole Act.
2 Edw. 7, c. 34.	The Patents Act, 1902 - -	The whole Act.
7 Edw. 7, c. 28.	The Patents and Designs (Amendment) Act, 1907.	The whole Act.

APPENDIX B.

GENEVA CONVENTION ACT, 1911.

(1 & 2 Geo. 5, c. 20.)

An Act to make such amendments in the Law as are necessary to enable certain reserved provisions of the Second Geneva Convention to be carried into effect. [18th August, 1911.]

Whereas His Majesty has ratified, with certain reservations, the Convention for the amelioration of the condition of the wounded and sick of armies in the field, drawn up in Geneva in the year one thousand nine hundred and six, and it is desirable, in order that those reservations may be withdrawn, that such amendments should be made in the law as are in this Act contained:

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Prohibition of use of emblem of red cross on white ground, &c.

1.—(1) As from the commencement of this Act it shall not be lawful for any person to use for the purposes of his trade or business, or for any other purpose whatsoever, without the authority of the Army Council, the heraldic emblem of the red cross on a white ground formed by reversing the Federal colours of Switzerland, or the words "Red Cross" or "Geneva Cross," and, if any person acts in contravention of this provision, he shall be guilty of an offence against this Act, and shall be liable on summary conviction to a fine not exceeding ten pounds, and to forfeit any goods upon or in connection with which the emblem or words were used.

(2) Where a company or society is guilty of any such contravention, without prejudice to the liability of the company or society, every director, manager, secretary, and other officer of the company or society who is knowingly a party to the contravention shall be guilty of an offence against this Act and liable to the like penalty.

(3) Nothing in this section shall affect the right (if any) of the proprietor of a trade mark registered before the passing of this Act, and containing any such emblem or words, to continue to use such trade mark for a period of four years from the passing of this Act, and, if the period of the registration or of the renewal of registration of any such trade mark expires during those four years, the registration thereof may be renewed until the expiration of those four years, but without payment of any fee.

(4) Proceedings under this Act shall not in England or Ireland be instituted without the consent of the Attorney-General.

(5) This Act shall extend to His Majesty's possessions outside the United Kingdom, subject to such necessary adaptations as may be made by Order in Council.

Short title.

2. This Act may be cited as the Geneva Convention Act, 1911.

APPENDIX C.

TRADE MARKS ACT, 1914.

(4 & 5 GEO. 5, c. 16.)

An Act to amend section sixty-four of the Trade Marks Act, 1905.
[7th August, 1914.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Amendment of 5 Edw. 7, c. 15, s. 64.

1. Clause (c) of sub-section (10) of section sixty-four of the Trade Marks Act, 1905, shall be and the same is hereby amended by insertion therein of the words "in respect of cotton piece goods or cotton yarn" immediately after the opening words, "No registration of a cotton mark."

Construction and commencement of Act.

2. This Act shall be construed as one with the Trade Marks Act, 1905, and the said Act of 1905 shall be construed and take effect from the date of its passing as if this Act had then formed part thereof.

Short title.

3. This Act may be cited as the Trade Marks Act, 1914; and the Trade Marks Act, 1905, and this Act may be cited together as the Trade Marks Act, 1905 and 1914.

APPENDIX D.

THE TRADE MARKS RULES, 1920.

DATED MARCH 9, 1920.

By virtue of the provisions of the Trade Marks Acts, 1905 to 1919, the Board of Trade do hereby make the following Rules:—

PRELIMINARY.

1. These Rules may be cited as the Trade Marks Rules, 1920, and shall come into operation from and immediately after the 31st day of March, 1920.

INTERPRETATION.

Interpretation.

2. In the construction of these Rules any words herein used the meaning of which is defined by the said Acts or the Interpretation Act, 1889 (*a*), shall have the meanings thereby assigned to them respectively. 52 & 53 Vict. c. 63.

"Agent" means an agent duly authorised to the satisfaction of the Registrar.

"Office" means Patent Office, Trade Marks Branch, 25, Southampton Buildings, London, W.C.2.

"Journal" means "Trade Marks Journal."

"Acts" means the Trade Marks Acts, 1905 to 1919.

FEES.

Fees.

3. The fees to be paid in pursuance of the Acts shall be the fees specified in the First Schedule to these Rules.

FORMS.

Forms.

4. The forms herein referred to are the forms contained in the Second Schedule to these Rules and such forms shall be used in all cases to which they are applicable, and shall be modified as directed by the Registrar to meet other cases.

(*a*) NOTE.—The more material definitions of the Interpretation Act are:—

"Statutory Declaration" means a declaration made by virtue of the Statutory Declarations Act, 1835.

"Month" means calendar month.

"Person," unless the contrary intention appears, includes any body of persons corporate or unincorporate.

Words in the singular shall include the plural and words in the plural shall include the singular.

Classification of Goods.

Classification of goods.

5. For the purposes of trade marks registration and of these Rules goods are classified in the manner appearing in the Third Schedule hereto.

If any doubt arises as to what class any particular description of goods belongs to, the doubt shall be determined by the Registrar.

Documents.

Size, &c. of documents.

6. Subject to any other directions that may be given by the Registrar, all applications, notices, counter-statements, papers having representations affixed, or other documents required by the Acts or by these Rules to be left with or sent to the Registrar or to the Keeper of Cotton Marks or to the Cutlers' Company, shall be upon foolscap paper of a size of approximately 13 inches by 8 inches, and shall have on the left-hand part thereof a margin of not less than one inch and a half.

Service of documents.

7. Any application, statement, notice, or other document authorised or required to be left, made, or given at the Office, or to or with the Registrar, or with or to any other person may be sent through the post by a prepaid or official-paid letter; any document so sent shall be deemed to have been delivered at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service or sending, it shall be sufficient to prove that the letter was properly addressed and put into the post. A letter addressed to a registered proprietor of a trade mark at his address as it appears on the register, or address for service, or to any applicant for or person opposing the registration of a trade mark at the address appearing in the application or notice of opposition or given for service as hereinafter provided shall be deemed to be sufficiently addressed.

Address.

8. Where any person is by the Acts or these Rules bound to furnish the Registrar with an address the address given shall in all cases be as full as possible, for the purpose of enabling any person easily to find the place of business of the person whose address is given.

The Registrar may require the address to include the name of the street, and the number in the street or name of premises, if any.

Address for service.

9. Every applicant for the registration of any trade mark, and every opponent to such registration, and every agent, who does not reside or carry on business in the United Kingdom, shall, if so required, give an address for service in the United Kingdom, and such address may be treated as the actual address of such applicant, opponent, or agent for all purposes connected with such application for registration or the opposition thereto.

The Registrar may require the proprietor of a registered trade mark who does not reside or carry on business within the United Kingdom to give an address for service within the United Kingdom, and such address may be treated as the actual address of the proprietor for all purposes connected with such trade mark.

Agents.

Agency.

10. An application for registration and an opposition to registration and all other communications between an applicant, an opponent and the Registrar, or the Board of Trade, and between the proprietor of a registered trade mark and the Registrar, or the Board of Trade, or any other person, may be made by or through an agent.

Any such applicant, opponent, or proprietor may appoint an agent to represent him in the matter of the trade mark by signing and sending to the Registrar an authority in writing to that effect in the Form TM No. 1, or in such other form as the Registrar may deem sufficient. In case any proprietor of a registered trade mark shall appoint such an agent, service upon such agent of any document relating to such trade mark shall be deemed to be service upon the person so appointing him, and all communications directed to be made to such person in respect of such trade mark may be addressed to such agent.

The Registrar shall not be bound to recognise as such agent any person who has been convicted criminally or struck off the Roll of Solicitors, or whose name, by reason of his having been adjudged guilty of conduct discreditable to a patent agent has been erased from the Register of Patent Agents, kept under the provisions of the Patents and Designs Act, 1907 and 1919, and not since restored. 7 Edw. 7, c. 29; 9 & 10 Geo. 5, c. 80.

Registrable Trade Marks.

Registrable trade marks.

11. The Registrar may refuse to accept any application for the registration of a mark upon which any of the following appear:—

(a) The words "Patent," "Patented," or "By Royal Letters Patent," "Registered," "Registered Design," "Copyright," "Entered at Stationers' Hall," "To counterfeit this is a forgery," or words to like effect.

(b) Representations of Their Majesties or of any member of the Royal Family.

Royal Arms, &c.

12. Representations of the Royal or Imperial Arms or crests, armorial bearings, insignia or devices so nearly resembling them as to lead to mistake, or of British Royal or Imperial crowns, or of the Royal, Imperial or National flags, or the word Royal or Imperial or any other words, letters, or devices calculated to lead persons to think that the applicant has Royal patronage or authorisation, may not appear on trade marks the registration of which is applied for. Provided always that nothing contained in this rule shall preclude the Registrar from allowing the registration as an "old mark," that is as a mark which was used by the applicant or his predecessors in business before the 13th August, 1875, of any mark which was capable of being so registered before the Trade Marks Act, 1905, came into operation. 5 Edw. 7. c. 15.

Arms of city, &c.

13. Where a representation of the armorial bearings, insignia, decorations or flags of any state, city, borough, town, place, society, body corporate, or institution appears on a mark, the applicant shall, if so required, furnish the Registrar with a consent from such official as the Registrar may consider entitled to give consent to the use of such emblems.

Representations of living person or persons recently dead.

14. Where the names or representations of living persons appear on a trade mark, the Registrar shall, if he so require, be furnished with consents from such persons before proceeding to register the mark, and in the case of persons recently dead the Registrar may call for consents from their legal representatives.

Name or description of goods.

15. Where the name or a description of any goods appears on a trade mark the Registrar may refuse to register such mark in respect of any goods other than the goods so named or described.

Where the name or description of any goods appears on a trade mark which name or description in use varies the Registrar may permit the registration of the mark with the name or description upon it for goods other than those named or described, the applicant stating in his application that the name or description varies.

APPLICATION FOR REGISTRATION.

Form of application.

16. An application for the registration of a trade mark must be made upon the appropriate form as in the Second Schedule to these Rules, and must be signed by the applicant or his agent.

Application by firm.

17. If application for registration of a trade mark be made by a firm or partnership it may be signed in the name or for and on behalf of the firm or partnership by any one or more members thereof, but the full names of all the partners shall be given in the body of the application.

Application by body corporate.

If the application be made by a body corporate it may be signed by a Director or by the Secretary or other principal officer of such body corporate.

Address of application.

18. Where application is made for registration of a cotton mark the applicant shall address and send his application to the Keeper of Cotton Marks at the Manchester Branch, 501, Royal Exchange, Manchester. Other applications (except applications which under section 63 of the Trade Marks Act, 1905, should be made to the Cutlers' Company) shall be addressed and sent to the Registrar at the Office.

Acknowledgment of application.

19. On or after receipt of the application the Registrar shall furnish the applicant with an acknowledgment thereof.

Application for old mark.

20. Where application is made to register a trade mark which was used by the applicant or his predecessors in business before the 13th August, 1875, the application shall contain a statement of the time during which and by whom it has been used in respect of the goods mentioned in the application. The Registrar may require a statutory declaration verifying such user with exhibits showing the mark as used.

Contents of form of application.

21. Every application for registration of a trade mark shall contain a representation of the mark affixed to it in the square which the application form contains for that purpose.

Where the representation exceeds such square in size the representation shall be mounted upon linen, tracing cloth or other material that the Registrar may consider suitable. Part of the mounting shall be affixed in the space aforesaid and the rest may be folded over.

Additional representations.

22. There shall be sent with every application for registration of a trade mark four additional representations of such mark on the Form TM No. 4 or, in the case of a cotton mark, on Form Cotton

No. 3, exactly corresponding to that affixed to the application form, and noted with all such particulars as may from time to time be required by the Registrar or by the Keeper of Cotton Marks. Such particulars shall, if required, be signed by the applicant or his agent.

Representations to be durable.

23. All representations of marks must be of a durable nature, but the applicant may in case of need supply in place of representations on the Form TM No. 4, or Form Cotton No. 3, half sheets of strong foolscap of the size aforesaid with the representations affixed thereon and noted as aforesaid.

Separate applications.

24. Applications for the registration of the same mark in different classes shall be treated as separate and distinct applications, and in all cases where a trade mark is registered under the same official number for goods in more than one class, the registration shall henceforth for the purpose of fees and otherwise, be deemed to have been made on separate and distinct applications in respect of the goods included in each class.

Representations to be satisfactory.

25. The Registrar, if dissatisfied with any representation of a mark, may at any time require another representation satisfactory to him to be substituted before proceeding with the application.

Specimens of trade marks in exceptional cases.

26. Where a drawing or other representation or specimen cannot be given in manner aforesaid, a specimen or copy of the trade mark may be sent either of full size or on a reduced scale, and in such form as the Registrar may think most convenient.

The Registrar may also, in exceptional cases, deposit in the Office a specimen or copy of any trade mark which cannot conveniently be shown by a representation, and may refer thereto in the register in such manner as he may think fit.

Series of trade marks.

27. When application is made for the registration of a series of trade marks under section 26 of the Trade Marks Act, 1905, a representation of each trade mark of the series shall be affixed, as aforesaid, to the application form, and to each of the accompanying Forms TM No. 4 or Forms Cotton No. 3.

Transliteration and translation.

28. When a trade mark contains a word or words in other than Roman characters, there shall be indorsed on the application form, and on each of the accompanying Forms TM No. 4 or Forms Cotton No. 3, a sufficient transliteration and translation to the satisfaction of the Registrar of each of such words and every such endorsement shall be signed by the applicant or his agent.

Where a trade mark contains a word or words in a language other than English, the Registrar may ask for an exact translation thereof, and if he so requires such translation shall be indorsed and signed as aforesaid.

Procedure on Receipt of Application.

Search.

29. Upon receipt of an application for registration the Registrar shall, or may, if he deem it necessary, in the case of an application under the provisions of section 2 of the Trade Marks Act, 1919, cause a search to be made amongst the registered marks and pending applications for the purpose of ascertaining whether there are on record any marks for the same goods or description of goods identical

9 & 10 Geo. 5, c. 79.

with the mark applied for or so nearly resembling it as to be calculated to deceive.

Acceptance. 30. After such search (if any), if on consideration of the application and of any evidence which the applicant may or may be required to furnish the Registrar thinks there is no objection to the mark being registered, he may accept it absolutely, or subject to such conditions, amendments, modifications or limitations as he may think right to impose, which he shall communicate to the applicant in writing.

Objections. 31. After such search (if any), if on consideration of the application and of any evidence which the applicant may or may be required to furnish any objections appear, a statement of those objections shall be sent to the applicant in writing, and unless within one month the applicant applies for a hearing, he shall be deemed to have withdrawn his application.

Hearings. 32. If the Registrar accepts an application subject to any conditions, amendments, modifications, or limitations, and the applicant objects to such conditions, amendments, modifications, or limitations, he shall within one month from the date of the communication notifying such acceptance apply for a hearing, and if he does not do so he shall be deemed to have withdrawn his application. If the applicant does not object to such conditions, amendments, modifications, or limitations, he shall forthwith notify the Registrar in writing.

Decision of Registrar. 33. The decision of the Registrar at such hearing as aforesaid shall be communicated to the applicant in writing, and if he objects to such decision, he may within one month apply upon Form TM No. 5, requiring the Registrar to state in writing the grounds of his decision and the materials used by him in arriving at the same.

Upon receipt of such form the Registrar shall send to the applicant such statement as aforesaid in writing, and the date when such statement is sent shall be deemed to be the date of the Registrar's decision for the purpose of appeal.

Disclaimers. 34. The Registrar may call on an applicant to insert in his application such disclaimer as the Registrar may think fit, in order that the public generally may understand what the applicant's rights, if his mark is registered, will be.

Application under sect. 2 of Trade Marks Act, 1919. 35. An application under the provisions of section 2 of the Trade Marks Act, 1919, shall be made on Form TM No. 3 or in the case of a cotton mark, on Form Cotton No. 2, with a statutory declaration as required, but the Registrar may require such further evidence as to user or otherwise as he may think necessary.

Special Trade Marks under Section 62.

Application under sect. 62. 36. Where an association or person desires to register a mark under section 62 of the Acts, application shall be made to the Registrar in writing upon the Form TM No. 6.

Mode of application. 37. Such application shall be in duplicate and shall be accompanied by four copies of the mark applied for.

Report by Registrar. 38. Upon the receipt of such application the Registrar shall as soon as may be notify the same to the Board of Trade together with his report upon the application, and shall at the same time send a

copy of the application together with two copies of the mark applied for to the Board. The Registrar shall also send the applicants a copy of his report, and within one month from the receipt of such report the applicants shall send the Comptroller, Industrial Property Department, Board of Trade, 25, Southampton Buildings, London, W.C.2, in duplicate a case setting out the grounds upon which they rely in support of their application, and if they fail so to do their application shall be deemed to be abandoned.

Hearing.

39. Upon receipt of such case the Board may call for such evidence, if any, as they think fit and shall, if necessary, hear the applicants and the Registrar, and make an order determining whether and subject to what conditions, amendments, modifications or limitations, if any, the application may be permitted to proceed.

Advertisement, &c.

40. If such application is permitted to proceed the mark shall be advertised and the application shall be treated in all respects as if it were an ordinary application, and it shall be open to opposition in the same way and all such proceedings shall be had therein as if it were an application under section 12 of the Trade Marks Act, 1905.

Advertisement of Application.

Advertisement of application.

41. Every application either before or after acceptance, as provided by section 13 of the Acts, shall be advertised by the Registrar in the Journal during such times and in such manner as he may direct.

If no representation of the trade mark be inserted in connexion with the advertisement of an application, the Registrar shall refer in such advertisement to the place or places where a specimen or representation of the trade mark is deposited for exhibition.

Wood block or electrotype.

42. For the purposes of such advertisement the applicant may be required to furnish a wood block or electrotype (or more than one, if necessary) of the trade mark, of such dimensions as may from time to time be directed by the Registrar, or such other information or means of advertising the trade mark as may be required by the Registrar; and the Registrar, if dissatisfied with the block or electrotype furnished by the applicant or his agent, may require a fresh block or electrotype before proceeding with the advertisement.

Advertisement of series.

43. When an application relates to a series of trade marks differing from one another in respect of the particulars mentioned in section 26 of the Trade Marks Act, 1905, the applicant may be required to furnish a wood block or electrotype (or more than one, if necessary) of any or of each of the trade marks constituting the series; or the Registrar may, if he thinks fit, insert with the advertisement of the application a statement of the manner in respect of which the several trade marks differ from one another.

Advertisement under sect. 14 (9).

44. Advertisements under section 14 (9) of the Trade Marks Act, 1905, shall *mutatis mutandis* be made in the same manner as advertisements relating to an application for registration.

Opposition to Registration.

Opposition.

45. Any person may within one month from the date of any advertisement in the Journal of an application for registration of a

trade mark give notice in writing at the Office of opposition to the registration.

Notice of opposition.

46. Such notice shall be in Form TM No. 7, and shall contain a statement of the grounds upon which the opponent objects to the registration. If registration is opposed on the ground that the mark resembles marks already on the register, the numbers of such marks and the numbers of the Journals in which they have been advertised shall be set out. Such notice shall be accompanied by a duplicate which the Registrar will forthwith send to the applicant.

Counter-statement.

47. Within one month from the receipt of such duplicate the applicant shall send to the Registrar a counterstatement (Form TM No. 8) in writing setting out the grounds on which he relies as supporting his application. The applicant shall also set out what facts, if any, alleged in the Notice of Opposition he admits. Such counterstatement shall be accompanied by a duplicate in writing.

Evidence in support of opposition.

48. Upon receipt of such counterstatement and duplicate the Registrar will forthwith send the duplicate to the opponent and within one month from the receipt of the duplicate the opponent shall leave at the Office such evidence by way of statutory declaration as he may desire to adduce in support of his opposition and shall deliver to the applicant copies thereof.

Evidence in support of application.

49. If an opponent leaves no evidence, he shall, unless the Registrar otherwise directs, be deemed to have abandoned his opposition, but if he does then within one month from the receipt of the copies of declarations, the applicant shall leave at the Office such evidence by way of statutory declaration as he desires to adduce in support of his application and shall deliver to the opponent copies thereof.

Evidence in reply by opponent.

50. Within fourteen days from the receipt by the opponent of the copies of the applicant's declarations the opponent may leave at the Office evidence by statutory declaration in reply, and shall deliver to the applicant copies thereof. Such evidence shall be confined to matters strictly in reply.

Further evidence.

51. No further evidence shall be left on either side, but in any proceedings before the Registrar, he may at any time, if he thinks fit, give leave to either the applicant or the opponent to file any evidence upon such terms as to costs or otherwise as he may think fit.

Exhibits.

52. Where there are exhibits to declarations filed in an opposition, copies or impressions of such exhibits shall be sent to the other party on his request, or, if such copies or impressions cannot conveniently be furnished, the originals shall be sent to the Office, so that they may be open to inspection. The original exhibits shall be produced at the hearing unless the Registrar otherwise directs.

Hearing.

53. Upon completion of the evidence the Registrar shall give notice to the parties of a date when he will hear the arguments in the case. Such appointment shall be for a date at least fourteen days after the date of the notice, unless the parties consent to a shorter notice. Within seven days from the receipt of such notice both parties shall file Form TM No. 9. A party who receives such notice and who does not, within seven days from the receipt thereof, give notice on Form TM No. 9 that he intends to appear, may be treated as not desiring to be heard and the Registrar may act accordingly.

54. Where in opposition proceedings any extension of time is granted to any party, the Registrar may thereafter, if he thinks fit, without giving the said party a hearing, grant any reasonable extension of time to the other party in which to take any subsequent step. Extension of time.

55. Where a party giving notice of opposition neither resides nor carries on business in the United Kingdom, the Registrar may call upon him to give a security, in such form as the Registrar may deem sufficient, for the costs of the proceedings before the Registrar, for such amount as to the Registrar may seem fit, and at any stage in such opposition may require further security to be given at any time before giving his decision in the case. Security for costs.

56. In the event of an opposition being uncontested by the applicant, the Registrar in deciding whether costs should be awarded to the opponent shall consider whether proceedings might have been avoided if reasonable notice had been given by the opponent to the applicant before the opposition was filed. Costs in uncontested cases.

Non-Completion.

57. Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar shall give notice to the applicant in writing in the Form O No. 1 of such non-completion, and if the applicant has an agent, shall send a duplicate of such notice to such agent. If after fourteen days from the date when such notice was sent, or such further time as the Registrar may allow, the registration is not completed, the application shall be deemed to be abandoned. Non-completion within 12 months.

Entry on the Register.

58. As soon as may be after the expiration of one month from the date of the advertisement in the Journal of any application, the Registrar shall, subject to any opposition and the determination thereof, and subject to the provisions of section 16 of the Acts, and upon payment of the prescribed fee, on Form TM No. 10, enter the trade mark on the register. The entry of a trade mark on the register shall give the date of the registration, the goods in respect of which it is registered, and all particulars named in section 4 of the Trade Marks Act, 1905, together with particulars of the trade, business, profession, or occupation, if any, of the proprietor, and such other particulars as the Registrar may deem necessary. Entry on register.

59. Where a mark is registered as associated with any other mark or marks the Registrar shall note upon the register in connection with such mark the numbers of the marks with which it is associated and shall also note upon the register in connection with each of the associated marks the number of the newly registered mark as being an associated mark with each of them. Associated marks.

60. In case of the death of any applicant for a trade mark after the date of his application, and before the trade mark applied for has been entered on the register, the Registrar, after the expiration of the prescribed period of advertisement, may, on being satisfied of the applicant's death, enter on the register, in place of the Death of applicant before registration.

name of such deceased applicant, the name, address, and description of the person owning the goodwill of the business, on such ownership being proved to the satisfaction of the Registrar.

Certificate of registration.

61. Upon the registration of a trade mark the Registrar shall issue to the applicant a certificate in the Form O No. 2.

RENEWAL.

Renewal of registration.

62. At any time not less than two months and not more than three months before the expiration of the last registration of a trade mark any person may leave at the Office a fee for the renewal of the registration of the mark upon Form TM No. 11. Such person shall indorse upon such form his name and address, and before taking any further step the Registrar may require such person to furnish within five days an authority to pay such fee signed by the registered proprietor, and if such person does not furnish such authority, may return such fee and treat it as not received.

Notification of receipt of renewal fee.

63. When he does not require such authority, the Registrar shall upon receipt of such fee communicate with the registered proprietor at his registered address, stating that the fee has been received and that the registration will in due course be renewed.

Notice before removal of trade mark from register.

64. At a date not less than one month and not more than two months before the expiration of the last registration of a mark, if no fee upon the Form TM No. 11 has been received, the Registrar shall send to the registered proprietor at his registered address a notice in the Form O No. 3.

Second notice before removal of trade mark from register.

65. At a time not less than 14 days and not more than 28 days before the expiration of the last registration of a mark, the Registrar shall, if no renewal fee has been received, send a notice to the registered proprietor at his registered address in the Form O No. 4.

Advertisement of non-payment.

66. If at the date of the expiration of the last registration of a mark the renewal fee has not been paid, the Registrar shall advertise the fact forthwith in the Journal, and if within one month of such advertisement the renewal fee upon Form TM No. 12, together with an additional fee upon Form TM No. 13, is received, he may renew the registration without removing the mark from the register.

Removal of trade mark from register.

67. Where after one month from such advertisement such fees have not been paid, the Registrar may remove the mark from the register as of the date of the expiration of the last registration, but may upon payment of the renewal fee upon Form TM No. 12, together with the additional fee upon the Form TM No. 14, restore the mark to the register if satisfied that it is just so to do, and upon such conditions as he may think fit to impose.

Record of removal of mark from register.

68. Where a trade mark has been removed from the register the Registrar shall cause to be entered in the register a record of such removal and of the cause thereof.

Notice and advertisement of renewal.

69. Upon the renewal of a registration a notice to that effect shall be sent to the registered proprietor at his registered address and the renewal shall be advertised in the Journal.

Assignments.

Joint application for entry of assignment.

70. Where a person becomes entitled by assignment, transmission, or other operation of law to a registered trade mark he may, conjointly with the registered proprietor, make application to the Registrar on Form TM No. 15 to register his title.

Application for entry of assignment by subsequent proprietor.

71. Where a person becomes entitled to a registered trade mark in the manner referred to in Rule 70, and no conjoint application as therein mentioned is made, he shall make application to the Registrar on Form TM No. 16 to register his title. Such application shall in the case of an individual be signed by the applicant and in the case of a firm or partnership by one or more members of such firm or partnership, and in the case of a body corporate shall be signed by a director or by the secretary or other principal officer of such body corporate.

Particulars to be stated in application.

72. An application under Rule 70 or Rule 71 shall contain the name, address and description of the person claiming to be entitled, together with full particulars of the instrument, if any, under which he claims, and such instrument shall be produced for inspection by the Registrar. The full names of all the partners in a firm or partnership shall be given in the body of the application.

Copies of documents.

73. The Registrar may in any case require an attested copy of any instrument produced for inspection in proof of title.

Case accompanying application.

74. Where in the case of an application on Form TM No. 15 or Form TM No. 16 the applicant does not claim to be entitled under any document or instrument which is capable in itself of furnishing proof of his title, he shall, unless the Registrar otherwise directs, either upon or with the application, state a case setting forth the full particulars of the facts upon which his claim to be proprietor of the trade mark is based, and showing that the trade mark has been transmitted or assigned in connection with the goodwill of the business concerned. Such case shall be verified by a statutory declaration if so required by the Registrar on Form TM No. 17.

Proof of title.

75. In any case, the Registrar may call on any person who desires to be registered as proprietor of a trade mark for such proof or additional proof of title and of the existence and ownership of such goodwill as aforesaid as the Registrar may require for his satisfaction.

Entry in registry.

76. When the Registrar is satisfied as to the applicant's title, he shall cause the applicant to be registered as proprietor of the trade mark, and shall record in the register such particulars as he may consider necessary of the instrument, if any, under which the title was acquired.

Alteration of Address.

Alteration of address in register.

77. Every registered proprietor of a trade mark who alters his address shall forthwith apply to the Registrar on Form TM No. 18 to insert the new address on the register, and the Registrar shall alter the register accordingly.

Discretionary Power.

Hearing.

78. Before exercising any discretionary power given to the Registrar by the Acts, or these Rules, adversely to any person, the Registrar shall, if so required, hear the person who will be affected by the exercise of such power.

Application for hearing.

79. An application for a hearing shall be made within one month from the date when the matter on which the Registrar is called on to exercise discretionary power has arisen.

Notice of hearing.

80. Upon receiving such application the Registrar shall give the person applying ten days' notice of a time when he may be heard by himself or his agent.

Within five days from the date when such notice would be delivered in the ordinary course of post the person applying shall notify the Registrar whether or not he intends to be heard on the matter.

Notification of decision.

81. The decision of the Registrar in the exercise of any such discretionary power as aforesaid shall be notified to the person affected.

APPLICATIONS UNDER SECTION 23 OF THE TRADE MARKS ACT, 1905.

Application under sect. 23 of Act of 1905.

82. All applications to the Registrar under section 23 of the Trade Marks Act, 1905, shall be upon the Form TM No. 19. Such application shall be accompanied by a case setting out fully the facts relating to the marks which the Registrar is requested to permit an apportionment of.

Registrar to enquire and decide.

83. Upon receipt of such request and of such case the Registrar shall enquire into the facts and call for such evidence as he may deem necessary upon the subject of such application. Before giving his decision the Registrar shall, if necessary, give the parties an opportunity of attending before him at a hearing either by themselves or by their agents.

The decision of the Registrar shall be in writing.

Note in register.

84. Upon any apportionment of marks under this section the Registrar shall insert in the register a note in connection with each of the registered trade marks of the fact of such apportionment, and shall in such note refer to the date of the decision under which such apportionment has taken place.

APPLICATIONS UNDER SECTION 32 OF THE TRADE MARKS ACT, 1905.

Application under sect. 32 of Act of 1905.

85. Applications under section 32 of the Trade Marks Act, 1905, to the Registrar may be made by the registered proprietor, or by the trustee in bankruptcy of the registered proprietor, or where the registered proprietor is a company in liquidation, by the liquidator, and in other cases by such person as the Registrar may decide to be entitled to act in the name of the registered proprietor.

Evidence.

86. Where such application is made the Registrar may require such evidence by statutory declaration or otherwise as he may think fit as to the circumstances in which the application is made.

Advertisement of application.

87. Where application is made, on Form TM No. 24, to enter a disclaimer or memorandum relating to a trade mark, the Registrar, before deciding upon such application, shall advertise the application in the Journal for one month in order to enable any person desiring so to do to state any reasons in writing against the applicant being allowed to make such disclaimer or enter such memorandum.

APPLICATIONS UNDER SECTION 34 OF THE TRADE MARKS ACT, 1905.

Alteration of trade mark.

88. Where a person desires to apply under section 34 of the Trade Marks Act, 1905, to alter a trade mark he shall make his application in writing on Form TM No. 25, and shall furnish the Registrar with four copies of the mark as it will appear when altered.

Advertisement of alteration.

89. Before proceeding with such application the Registrar may call on the applicant to furnish a block suitable to advertise in the Journal the fact that such application has been made, or, if he think fit, the Registrar, without calling for a block, may insert an advertisement describing the alteration proposed in words so that it can be understood by persons interested in the matter.

When leave is granted the Registrar may, if he is not already in possession of a block showing the trade mark as altered, cause the applicant to furnish a block showing the trade mark as altered for advertisement in the Journal, and upon receipt of such block shall forthwith advertise the mark as altered in the Journal.

APPLICATIONS UNDER SECTION 9 OF THE TRADE MARKS ACT, 1919.

Application to rectify, or remove a trade mark from the register.

90. An application for the rectification of the register or the removal of a trade mark from the register, if made to the Registrar, shall be in Form TM No. 26. Such application shall be accompanied by an unstamped copy and a statement in duplicate setting out fully the nature of the applicant's interest, the facts upon which he bases his case and the relief which he seeks. Copies of the application and the statement of case will be transmitted forthwith by the Registrar to the registered proprietor.

Further procedure.

91. Upon such application being made and copy thereof transmitted to the registered proprietor the provisions of Rules 47 to 56 shall apply *mutatis mutandis* to the further proceedings thereon. In any case of doubt any party may apply to the Registrar for directions.

Intervention by third parties.

92. Any person other than the registered proprietor alleging interest in a registered Trade Mark in respect of which an application is made on Form TM No. 26 may apply to the Registrar on Form TM No. 27 for leave to intervene, and the Registrar may refuse or grant such leave, after hearing the parties concerned, upon such conditions and terms as he may deem fit. Before dealing with such application in any way the Registrar may require the applicant to give an undertaking to pay such costs as in the circumstances he may award to any party.

SEARCH.

Searches.

93. The Registrar, if requested so to do in writing upon a Form TM No. 28, may cause a search to be made in any class to ascertain whether any marks are on record at the date of such search which may resemble any mark sent in duplicate to him by the person requesting such search and may cause that person to be informed of the result of such search.

Hours of Inspection.

Hours of inspection.

94. The office shall be open to the public every weekday, except Saturday, between the hours of ten and four, and on Saturday between the hours of ten and one, except on the days following:

Christmas Day; Good Friday; the day observed as His Majesty's birthday; the days observed as days of public fast or thanksgiving, or as holidays at the Bank of England; and days which may from time to time be notified by a placard posted in a conspicuous place at the Office.

Power to Dispense with Evidence.

Dispensing with evidence.

95. Where under these Rules any person is required to do any act or thing, or to sign any document, or to make any declaration on behalf of himself or of any body corporate, or any document or evidence is required to be produced to or left with the Registrar, or at the office, and it is shown to the satisfaction of the Registrar that from any reasonable cause such person is unable to do such act or thing, or to sign such document, or make such declaration, or that such document or evidence cannot be produced or left as aforesaid, it shall be lawful for the Registrar, and upon the production of such other evidence, and subject to such terms as he may think fit, to dispense with any such act or thing, document, declaration, or evidence.

Amendments.

Amendment of documents.

96. Any document or drawing or other representation of a trade mark may be amended, and any irregularity in procedure which in the opinion of the Registrar may be obviated without detriment to the interests of any person may be corrected, if the Registrar think fit, and on such terms as he may direct.

Enlargement of Time.

Enlargement of time.

97. The time prescribed by these Rules for doing any act, or taking any proceeding thereunder, may be enlarged by the Registrar, if he think fit, and upon such notice to other parties, and proceedings thereon, and upon such terms as he may direct, and such enlargement may be granted though the time has expired for doing such act or taking such proceeding.

Excluded days.

98. Whenever the last day fixed by the Acts, or by these Rules, for leaving any document or paying any fee at the office shall fall on Christmas Day, Good Friday, or on a Saturday or Sunday, or any day observed as a holiday at the Bank of England, or any day observed as a day of public fast or thanksgiving, herein referred to as excluded days, it shall be lawful to leave such document or to pay such fee on the day next following such excluded day, or days if two or more of them occur consecutively.

Certificates.

Certificates by Registrar.

99. The Registrar, when required otherwise than under section 17 of the Trade Marks Act, 1905, to give a certificate as to any entry,

matter, or thing which he is authorised by the Acts, or any of these Rules to make or do, may, on receipt of a request in writing, and on payment of the prescribed fee, give such certificate, but every certificate of registration so given shall have specified on the face thereof, whether the same is to be used in legal proceedings, or for the purpose of obtaining registration abroad, or for purposes other than use in legal proceedings or obtaining registration abroad.

Marks registered without limitation of colour.

100. Where a mark is registered without limitation of colour it shall be lawful for the Registrar to grant a certificate of its registration for the purpose of obtaining registration abroad either in the colour in which it appears upon the register or in any other colour or colours.

Certificates for use in obtaining registration abroad.

101. Where a certificate of registration is desired for use in obtaining registration abroad, the Registrar shall affix to the said certificate a copy of the mark, and shall state in such certificate such particulars concerning the registration of the mark as to him may seem fit, and may omit therefrom reference to any disclaimers appearing on the register.

Declarations.

Manner in which, and person before whom declaration is to be taken.

102. The statutory declarations required by the Acts, and these Rules, or used in any proceedings thereunder, shall be made and subscribed as follows:—

(a) In the United Kingdom, before any justice of the peace, or any commissioner or other officer authorised by law in any part of the United Kingdom to administer an oath for the purpose of any legal proceeding;

(b) In any other part of His Majesty's dominions, before any court, judge, justice of the peace, or any officer authorised by law to administer an oath there for the purpose of a legal proceeding; and

(c) If made out of His Majesty's dominions, before a British Minister, or person exercising the functions of a British Minister, or a Consul, Vice-Consul, or other person exercising the functions of a British Consul, or a notary public, or before a judge or magistrate.

Notice of seal of officer taking declaration to prove itself.

103. Any document purporting to have affixed, impressed, or subscribed thereto or thereon the seal or signature of any person hereby authorised to take such declaration in testimony of such declaration having been made and submitted before him, may be admitted by the Registrar without proof of the genuineness of any such seal or signature, or of the official character of such person or his authority to take such declaration.

Cutlers' Company.

Applications.

104. All applications to the Cutlers' Company for registration of a trade mark, under section 63 of the Trade Marks Act, 1905, shall be in duplicate accompanied by the prescribed fees and representations. Requests to enter old corporate marks on the Sheffield Register, under section 63 (2) of the Trade Marks Act, 1905, should be made on Form Sheffield No. 1.

Notice to Registrar.

105. The Cutlers' Company shall, within seven days of the receipt by them of an application to register a trade mark, send the Registrar one copy of such application, by way of notice thereof, together with

two representations of the mark for each class for which the applicant seeks registration.

Objections by Registrar to acceptance.

106. The time within which the Registrar shall give notice to the Cutlers' Company of any objection he may have to the acceptance of an application for registration made to the said Company shall be one month from the date of the receipt by the Registrar of the notice from the said Company of the making of the application.

Advertisement of application.

107. If no such objection is made by the Registrar, the Cutlers' Company shall require the applicant to send the Registrar a wood block or electrotype as the Registrar may direct, and the Registrar shall, if satisfied with such wood block or electrotype, advertise the application in the same manner as an application made to him at the Office.

Notification to Cutlers' Company of application.

108. The manner in which the Registrar shall notify to the Cutlers' Company an application and proceedings thereon made as mentioned in sub-section 8 of section 63 of the Trade Marks Act, 1905, shall be by sending to the Cutlers' Company a copy of the Journal containing the application of which notice is required to be given with a note distinguishing such application.

Similarity of proceedings in London and Sheffield.

109. The provisions of these Rules as to forms, representations, the proceedings on opposition to registration, registration, and all subsequent proceedings, shall, as far as the circumstances allow, apply to all applications to register made to the Cutlers' Company, and to all proceedings consequent thereon.

Cotton Marks.

Application.

110. An application to the Manchester Branch for registration of a trade mark under section 64 of the Trade Marks Act, 1905, shall be in duplicate. The special forms for cotton marks contained in the Second Schedule to these Rules shall be used. One of the forms of application shall be stamped and the other unstamped.

One representation to be sent to Registrar.

111. The Keeper of Cotton Marks shall forthwith, on receipt of such application, send the Registrar one representation of the mark applied for.

Search.

112. As soon as may be after receiving any application, the Keeper of Cotton Marks shall, or may, if he deem it necessary, in the case of an application under the provisions of section 2 of the Trade Marks Act, 1919, make a search amongst the marks on the Manchester register, in the B List, those which have been refused upon application made within fourteen years next before the date of application under examination and those refused upon applications of earlier date, which have been continued for quotation in the collection of refused marks under the provisions of Rule 113 of these Rules and those which are pending, and shall notify to the Registrar the application, and the marks, if any, which he has found so nearly resembling the mark applied for as to be calculated to deceive, and together with such notification shall send a report upon the application.

Refused marks.

113. A mark shall not be continued in the collection of refused marks as a mark to be quoted by the Keeper for a period of more than fourteen years from the date of the application to register unless the applicant or his successor in business shall, before the expiration of the said period of fourteen years from the date of the appli-

cation to register, pay the prescribed continuance fee; and a mark which has been continued for quotation in the said collection on payment of the prescribed continuance fee shall not be continued in the collection for quotation after the expiration of a period of fourteen years from the date when the prescribed continuance fee became payable, unless the said fee shall be again paid before the expiration of such period and so on for every succeeding period of fourteen years from the date when the last prescribed continuance fee became payable.

Discontinuance on record of refused marks.

114. Before discontinuing for quotation a mark in the collection of refused marks, the Keeper of Cotton Marks shall, at a date not more than six months nor less than three months from the date on which the mark would be so discontinued, give notice that the mark will not be continued for quotation in the collection of refused marks unless the prescribed continuance fee shall be paid before the expiration of the periods of fourteen years mentioned in the last preceding Rule.

Notice to applicant.

115. The notice mentioned in Rule 114 of these Rules shall be addressed to the applicant at the address given on the form of application. In case such notice is returned by the Postal authorities, the Keeper of Cotton Marks may, so far as he can but without being under any obligation to do so, discover the present address of the applicant if he be still in business, or of his successors in business, or of the existing owner of the refused mark, if any, with a view of bringing the notice to his or their attention.

Continuance fee.

116. The prescribed continuance fee shall be paid by transmitting to the Keeper of Cotton Marks, at the Manchester Branch, the Form Cotton No. 6 in the Second Schedule hereto.

Hearings.

117. Upon considering the report of the Keeper of Cotton Marks, if the Registrar thinks it will be necessary to object to the acceptance of the application, he shall give notice to the applicant of a time when he can be heard, and, within one month after hearing the applicant, may give notice to the Keeper of Cotton Marks of objection to the acceptance of the application, or that he has no objection, as the case may be. If no notice of objection, or if notice of no objection is received from the Registrar, the application shall be advertised in the Journal by the Manchester Branch.

If the applicant, being notified as aforesaid of a time for hearing, does not attend, his application shall be deemed to be refused.

Registration.

118. If the mark is advertised by the Manchester Branch and is not opposed, the Keeper of Cotton Marks may call upon the applicant for the prescribed fee for the registration of such trade mark, and upon receipt thereof shall report to the Registrar, who shall forthwith, if he think fit, register the same.

Procedure.

119. Where under the Acts, or these Rules, an application has to be made to the Keeper of Cotton Marks, such application shall be made and such proceedings shall be had thereon as if in these Rules the expression "Manchester Branch, 501, Royal Exchange, Manchester," were substituted for the word "Office," and the expression "Keeper of Cotton Marks" were substituted for the word "Registrar."

Service of documents.

120. Where any document is by these Rules directed to be served upon the Registrar it shall, in respect of cotton marks, be served in duplicate upon the Keeper of Cotton Marks, who shall forthwith transmit one copy to the Registrar.

Search under Rule 93.

121. Where under Rule 93 a search has to be made by the Keeper of Cotton Marks, such search shall cover all marks of which there is a right to inspection under section 64 (11) of the Trade Marks Act, 1905.

Appeals to the Court.

Appeal to Court.

122. When any person intends to appeal to the Court, such appeal shall be made by motion in the usual way, and no such appeal shall be entertained unless notice of motion be given within one month from the date of the decision appealed against or within such further time as the Registrar shall allow.

Appeals to the Board of Trade.

Appeal to Board of Trade.

123. When any person intends to appeal to the Board of Trade he shall, before doing so, apply to the Registrar for a hearing and obtain a decision from him upon the point raised. Within one month from the date of such decision he shall, if he is advised to appeal to the Board of Trade in any case in which an appeal is given by the Acts, leave at the Office a notice of such his intention, on Form TM No. 29.

Such notice shall be accompanied—

(1) In case the appeal concerns an application not yet advertised, by a copy of the form of application and two representations of the mark applied for and a copy of the grounds of the Registrar's decision.

(2) In other cases by a copy of the decision of the Registrar and a statement of the date of the hearing before him.

Grounds of appeal to be stated.

124. Such notice shall also be accompanied by a statement in writing of the grounds of appeal, and of the appellant's case in support thereof.

Transmission of notice.

125. A copy of the notice and all the accompanying documents shall also be forthwith sent by the appellant to the Comptroller, Industrial Property Department, Board of Trade, 25, Southampton Buildings, London, W.C.2.

Directions by Board.

126. The Board of Trade may thereupon give such directions (if any) as they may think fit with respect to parties and evidence, or otherwise, for the purpose of the hearing of the appeal by the Board of Trade, or for the purpose of their referring the appeal to the Court to hear and determine the same.

Hearing of appeal.

127. Where the Board of Trade intend to hear the appeal, seven days' notice, or such shorter notice as the Board of Trade may in any particular case direct, of the time and place appointed for the hearing, shall be given to the Registrar and to the appellant.

No appeal unless notice duly given.

128. No appeal shall be entertained of which notice has not been given within one month from the date of the decision appealed against, or such further time as the Registrar may allow, except by special leave of the Board of Trade.

Withdrawal of Appeals.

Withdrawal of appeal.

129. Where under section 12 (5) or section 14 (8) of the Trade Marks Act, 1905, an appellant is entitled to withdraw his appeal, such withdrawal shall be effected by notice given to the Registrar and to the other parties, if any, to such appeal within seven days after the leave referred to in such sections has been obtained.

Applications to and Orders of the Court.

Application to Court.

130. Every application to the Court under the said Acts shall be served on the Registrar.

Order of Court.

131. Where an order has been made by the Court in any case under the Acts, the person in whose favour such order has been made, or such one of them, if more than one, as the Registrar may direct, shall forthwith leave at the Office an office copy of such order, together with Form TM No. 30 if required. The register may, if necessary, thereupon be rectified or altered by the Registrar.

Publication of order of Court.

132. Whenever an order is made by the Court under the said Acts the Registrar may, if he thinks that such order should be made public, publish it in the Journal.

Repeal.

Repeal.

133. All general rules relative to Trade Marks heretofore made by the Board of Trade under the Trade Marks Act, 1905, and in force on the 31st March, 1920, shall be, and they are, hereby repealed as from that date, without prejudice nevertheless, to anything done under such rules, or to any application or other matter then pending.

Dated this 9th day of March, 1920.

A. C. Geddes,
President of the Board of Trade.

SCHEDULES.

FIRST SCHEDULE.

Fees.

The following fees shall be paid in connection with applications, registrations, and other matters under the Trade Marks Acts, 1905 to 1919. Such fees must in all cases be paid before or at the time of the doing of the matter in respect of which they are to be paid:—

	£	s.	d.	Corresponding Form.
1. On application not otherwise charged to register a trade mark for one or more articles included in one class	1	0	0	T.M. No. 2 or 3, Cotton No. 1 or 2.
1*a*. On application not otherwise charged to register a series of trade marks for one or more articles included in one class	1	0	0	T.M. No. 2 or 3, Cotton No. 1 or 2.
1*b*. On request to the Cutlers' Company to enter a mark on the Sheffield Register under section 63, sub-section (2)	5	0	0	Sheffield No. 1
1*c*. On application to the Board of Trade under section 62 for leave to register a mark for goods in one class	1	0	0	T.M. No. 6.
1*d*. On application to the Board of Trade under section 62 for leave to register a mark for goods in more than one class—				
In respect of every class	1	0	0	T.M. No. 6.
Total fee in no case to exceed £20 for any number of classes.				
2. On an application to registrar to state grounds of decision and materials used	1	0	0	T.M. No. 5.
3. On notice of opposition for each application opposed, by opponent	2	0	0	T.M. No. 7.
3*a*. On filing a counter-statement in answer to a notice of opposition, by the applicant for each application opposed	1	0	0	T.M. No. 8.
3*b*. On the hearing of each opposition, by applicant and by opponent respectively, or on the hearing of an application under section 9 of the Act of 1919, by applicant and proprietor respectively.	2	0	0	T.M. No. 9.
4. For registration of a trade mark for one or more articles included in one class	2	0	0	T.M. No. 10.
4*a*. For registration of a series of marks for one or more articles included in one class—				
For the first mark	2	0	0	T.M. No. 10.
And for every other mark of the series	0	5	0	
4*b*. For registration under section 62 of a mark for goods in more than one class—				
In respect of every class	2	0	0	T.M. No. 10.
Total fee in no case to exceed £40 for any number of classes.				

	£	s.	d.	Corresponding Form.
5. Upon each entry in the register of a mark of a note that the mark is associated with a newly registered mark	0	2	0	—
6. On application to register a subsequent proprietor in cases of assignment or transmission of a single mark—				
If made within six months from the date of acquisition of proprietorship or the coming into force of these Rules	2	0	0	T.M. No. 15 or 16.
If made after expiration of six months from date of acquisition of proprietorship and the coming into force of these Rules	10	0	0	T.M. No. 15 or 16.
6*a*. On application to register a subsequent proprietor of more than one mark standing in the same name, the devolution of title being identical in each case—				
If made within six months from the date of acquisition of proprietorship or the coming into force of these Rules—				
For the first mark	2	0	0	T.M. No. 15 or 16.
And for every other mark	0	2	6	
If made after expiration of six months from date of acquisition of proprietorship and the coming into force of these Rules—				
For the first mark	10	0	0	T.M. No. 15 or 16.
And for every other mark	0	2	6	
7. On application to change the name of a proprietor of a single mark where there has been no alteration in the proprietorship	0	10	0	T.M. No. 21.
7*a*. On application to change the name of a proprietor of more than one mark standing in the same name, the change being the same in each case—				
For the first mark	0	10	0	T.M. No. 21.
And for every other mark	0	2	0	
8. For renewal of registration of a mark at expiration of last registration	2	0	0	T.M. No. 11 or 12.
8*a*. For renewal of registration of a series of marks at the expiration of last registration—				
For the first mark of the series	2	0	0	T.M. No. 11 or 12.
And for every other mark of the series	0	2	6	
8*b*. For renewal of a mark registered under section 62 for goods in more than one class—				
In respect of every class	2	0	0	T.M. No. 11 or 12.
Total fee in no case to exceed £40 for any number of classes.				
9. Additional fee under Rule 66	1	0	0	T.M. No. 13.
10. Additional fee under Rule 67	2	0	0	T.M. No. 14.
11. For altering a single entry of the address of a registered proprietor	0	10	0	T.M. No. 18.
11*a*. For altering more than one entry of the address of a registered proprietor where the address in each case is the same and is altered in the same way—				
For the first entry	0	10	0	T.M. No. 18.
And for every other entry	0	2	0	

	£	s.	d.	Corresponding Form.
12. For every entry in the register of a rectification thereof or an alteration therein, not otherwise charged	1	0	0	T.M. No. 30.
13. For cancelling the entry or part of the entry of a trade mark upon the register on the application of the owner of such trade mark	0	10	0	T.M No. 22 or 23.
14. On application for rectification of register or removal of trade mark from register	3	0	0	T.M. No. 26.
15. On application for leave to intervene in proceedings for rectification of register or removal of trade mark from the register	2	0	0	T.M. No. 27.
16. On request, not otherwise charged, for correction of clerical error, or for permission to amend application, or for entry of disclaimer	0	10	0	T.M. No. 20 or 24.
17. For a search under Rule 93	1	0	0	T.M. No. 28.
18. For certificate of registrar of registration to be used in legal proceedings	2	0	0	T.M. No. 34.
19. For certificate of registrar of the registration of a trade mark to be used for the purpose of obtaining registration abroad	0	10	0	T.M. No. 33.
19*a*. For certificate of registrar of the registration of a series of marks for the purpose of obtaining registration abroad	1	0	0	T.M. No. 33.
20. For certificate of registrar other than certificate under section 17 or certificate of registration to be used in legal proceedings, or for the purpose of obtaining registration abroad	2	0	0	T.M. No. 31 or 32.
21. For certificate of Keeper of Cotton Marks	0	10	0	Cotton No. 4 or 5.
22. For the continuance for quotation of a cotton mark in the collection of refused marks— For each mark in each class for each period of fourteen years	1	0	0	Cotton No. 6.
23. On appeal from registrar to Board of Trade in respect of each decision appealed against by appellant	2	0	0	T.M. No. 29.
24. On an application to the registrar under section 23	5	0	0	T.M. No. 19.
25. On an application to the registrar for leave to add to or alter a single mark	2	0	0	T.M. No. 25.
25*a*. On an application to the registrar for leave to add to or alter more than one mark of the same proprietor, the addition or alteration to be made, in each case being the same— For the first mark	2	0	0	T.M. No. 25.
And for every other mark	1	0	0	
26. For inspecting register, notice of opposition, counter-statement or decision in connection with any particular trade mark, for every quarter of an hour	0	1	0	—
27. For making a search amongst the classified representations of trade marks, for every quarter of an hour	0	1	0	—
28. For office copy of documents, for every 100 words (but never less than 1*s*.)	0	0	6	—

	£ s. d.	Corresponding Form.
29. For certifying office copies MS. or printed matter.	0 10 0	—
30. In cases where the wood block or electrotype of the trade mark exceeds 2 inches in breadth or depth, or in breadth and depth—		
For every inch or part of an inch over 2 inches in breadth	0 4 0	—
For every inch or part of an inch over 2 inches in depth	0 4 0	—

The fees to be paid on any proceeding at the Manchester Branch and at Sheffield (except as specially provided above) shall be the same as for the similar proceeding at the London office.

For the purpose of these fees (except as specially provided above) every mark of a series under section 66 of the Patents Designs and Trade Marks Act, 1883, or section 26 of the Trade Marks Act, 1905, shall be deemed to be a mark separately registered.

Dated this 9th day of March, 1920.

A. C. GEDDES,
President of the Board of Trade.

Approved

JAMES PARKER,
J. TOWYN JONES,
Lords Commissioners of His Majesty's Treasury.

SECOND SCHEDULE.

FORMS.

	Page.	Corresponding Fee.
		No.
Authorisation	151	—
Application for registration of trade mark in Part A of the register	151	1, 1*a*
Application for registration in Part B of the register	151	1, 1*a*
Additional representation of trade mark	153	—
Request for statement of grounds of decision	153	2
Application for registration of trade mark under section 62	154	1*c* or 1*d*
Opposition to application for registration	154	3
Counter-statement to opposition to application for registration	155	3*a*
Application for hearing in opposition matter, or rectification or removal proceedings	155	3*b*
Notice of non-completion of registration	155	—
For registration of a trade mark	156	4, 4*a*, or 4*b*
Certificate of registration under section 17	156	—
Renewal of registration	157	8, 8*a*, or 8*b*
First notice before removal of mark from register, under section 30	157	—

	Page.	Corresponding Fee.
Second notice before removal of mark from register, under section 30	157	—
Renewal of registration after notice has been given by registrar	158	8, 8*a*, or 8*b*
Additional fee to accompany renewal fee within one month after advertisement of non-payment of renewal fee	158	9
Restoration of trade mark where removed for non-payment of fee	159	10
Request by registered proprietor and assignee to register assignee as subsequent proprietor	159	6, 6*a*
Request to enter name of subsequent proprietor	160	6, 6*a*
Declaration in support of request to enter name of subsequent proprietor	160	—
Application for alteration of address on register	161	11, 11*a*
Application for apportionment of trade marks	161	24
Correction of clerical error or amendment of application	162	16
Request to enter change of name of registered proprietor	162	7, 7*a*
Application by proprietor to cancel entry on register	162	13
Request to strike out goods from those for which a mark is registered	163	13
Request to enter disclaimer, &c.	163	16
Application to add to or alter a trade mark	164	25 or 25*a*
Application for rectification of register or removal of trade mark from register	164	14
Application for leave to intervene in proceedings for rectification of register or removal of trade mark from register	164	15
Request for search under Rule 93	165	17
Request to enter a mark on the Sheffield Register under section 63 (2)	165	1*b*
Application for registration of cotton mark in Part A of register	166	1 or 1*a*
Application for registration of cotton mark in Part B of register	167	1 or 1*a*
Additional representation of cotton mark	168	—
Request for certificate under section 64 (12)	168	21
Request for certificate of Keeper of Cotton Marks	169	21
Continuance for quotation of cotton mark in collection of refused marks	169	22
Certificate under section 64 (12)	169	—
Appeal from registrar to Board of Trade	170	23
Notice of order of Court for alteration of register	170	12
Request for general certificate	171	19
Request for certificate of refusal to register	171	20
Request for certificate of registration for use in obtaining registration abroad	172	19 or 19*a*
Request for certificate of registration for use in legal proceedings	172	18

FORM TM No. 1.

TRADE MARKS ACTS, 1905 TO 1919.

AUTHORISATION OF AGENT.

*I (or We) have appointed (*a*) of to act as my (or our) agent for (*b*) and request that all notices, requisitions and communications relating thereto may be sent to such agent at the above address. I revoke all previous authorisations, if any.

I (or We) hereby declare that I am (or We are) a (*c*)

(*d*)
Address .

Dated the day of , 19 .

To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane,
London, W.C.2.

* The full names of all the partners in a firm must be inserted.
(*a*) Here insert name and address of agent.
(*b*) Here state the particular purpose for which the agent is appointed.
(*c*) Here state nationality.
(*d*) To be signed by the person appointing the agent.

FORM TM No. 2.

TRADE MARKS ACTS, 1905 TO 1919.

[TRADEMARKS. £1.]

APPLICATION FOR REGISTRATION OF TRADE MARK IN PART A. OF THE REGISTER (other than Cotton Mark).

One representation to be fixed within this square, and four others to be sent on separate Forms TM. No. 4.

Representations of a larger size may be folded, but must then be mounted upon linen and affixed hereto.

Application is hereby made for Registration in Part A. of the Register of the accompanying Trade Mark in Class , in respect of (*a*) in the name of (*b*) of [*Address, description and*

nationality] trading as who claims to be the proprietor thereof (*c*).

(Signed)

Dated the day of , 19 .

To the Registrar,
Patent Office, Trade Marks Branch,
25, *Southampton Buildings, Chancery Lane,*
London, W.C.2.

(*a*) Only goods contained in one and the same class should be set out here. A separate application form is required for each separate class.
(*b*) Here insert legibly the full name, address, description and nationality of the individual, firm or company. Add trading style (if any). The names of all partners in a firm must be given in full.
(*c*) Alter to "claim to be the proprietors thereof" in the case of a firm or company.

FORM TM No. 3.

[TRADE MARKS. £1.]

TRADE MARKS ACTS, 1905 TO 1919.

APPLICATION FOR REGISTRATION OF TRADE MARK IN PART B. OF THE REGISTER (other than Cotton Mark).

One representation to be fixed within this square, and four others to be sent on separate Forms TM. No. 4.

Representations of a larger size may be folded, but must then be mounted upon linen and affixed hereto.

Application is hereby made for Registration in Part B. of the Register of the accompanying Trade Mark in Class , in respect of (*a*) in the name of (*b*) of [*Address, description and nationality*] trading as who claims to be the proprietor thereof (*c*), having used it in respect of the said goods for not less than two years prior to the date of this application, the date of its first user being .

(Signed)

Dated the day of , 19 .

To the Registrar,
Patent Office, Trade Marks Branch,
25, *Southampton Buildings, Chancery Lane,*
London, W.C.2.

(*a*) Only goods contained in one and the same class should be set out here. A separate application form is required for each separate class.
(*b*) Here insert legibly the full name, address, description and nationality of the individual, firm, or company. Add trading style (if any). The names of all partners in a firm must be given in full.
(*c*) Alter to "claim to be the proprietors thereof" in the case of a firm or company.

STATUTORY DECLARATION AS TO USER.

(To be indorsed on Form TM No. 3.)

I of do hereby solemnly and sincerely declare that have *bonâ fide* used the mark shown on the other side hereof as a Trade Mark in respect of the goods mentioned within the United Kingdom of Great Britain and Ireland since the .

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

(Signature of Declarant)

Declared at .

This day of , 19 .

Before me [*Signature of Authority before whom Declaration is made*].

FORM TM No. 4.

TRADE MARKS ACTS, 1905 TO 1919.

ADDITIONAL REPRESENTATION OF TRADE MARK, TO ACCOMPANY APPLICATION FOR REGISTRATION (other than Cotton Mark).

One representation of the trade mark to be affixed within this square. It must correspond *exactly* in all respects with the representation affixed to the Application Form.

Any representation of a larger size than foolscap may be folded, but must then be mounted upon linen and affixed hereto.

Four of these Additional Representations of the Trade Mark must accompany *each* Form of Application.

FORM TM No. 5.

TRADE MARKS ACTS, 1905 TO 1919. [TRADE MARKS. £1.]

REQUEST FOR STATEMENT OF GROUNDS OF DECISION.

You are hereby requested to state in writing the grounds of your decision, dated the day of , 19 , after the hearing on the day of , 19 , and the materials used by you in arriving at such decision.

(Signed)

Dated the day of , 19 .

To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane,
London, W.C.2.

FORM TM No. 6.

[TRADE MARKS. Fee 1*c* or 1*d*.]

TRADE MARKS ACTS, 1905 TO 1919.

SPECIAL APPLICATION FOR REGISTRATION OF TRADE MARK UNDER SECTION 62.

(*To be accompanied by an unstamped duplicate.*)

One representation to be fixed within this square, and four others to be sent on separate half-sheets of foolscap.

Representations of a larger size may be folded, but must then be mounted upon linen and affixed hereto.

Application is hereby made for registration of the accompanying Trade Mark in Class , in respect of (*a*) in the name of of [*Address, description and nationality*] who desire the Board of Trade to permit the registration thereof.

(Signed)

Dated the day of , 19 .

To the Registrar,
Patent Office, Trade Marks Branch,
25, *Southampton Buildings, Chancery Lane,*
*London, W.C.*2.

(*a*) Only goods contained in one and the same class should be set out here. A separate application form is required for each separate class.

FORM TM No. 7.

[TRADE MARKS. £2.]

TRADE MARKS ACTS, 1905 TO 1919.

NOTICE OF OPPOSITION TO APPLICATION FOR REGISTRATION.

(*To be accompanied by an unstamped duplicate.*)

In the matter of an application, No. by of .

*I hereby give notice of my intention to oppose the Registration of the Trade Mark advertised under the above number for Class in the Trade Marks Journal of the day of , 19 , No. , page .

The grounds of opposition are as follows:—

(Signed)

Dated the day of , 19 .

Address for service:—

To the Registrar,
Patent Office, Trade Marks Branch,
25, *Southampton Buildings, Chancery Lane,*
*London, W.C.*2.

* Here state full name and address.

FORM TM No. 8.

TRADE MARKS ACTS, 1905 TO 1919. [TRADE MARKS. £1.]

COUNTER-STATEMENT.

(*To be accompanied by an unstamped duplicate.*)

In the matter of an Opposition, No. ,
to Application No. .

I the applicant for the above Trade Mark, hereby give notice that the following are the grounds on which I rely as supporting my application:—

I admit the following allegations in the notice of Opposition:—

Signature .

Dated this day of , 19 .

To the Registrar,
Patent Office, Trade Marks Branch,
25, *Southampton Buildings, Chancery Lane,*
*London, W.C.*2.

FORM TM No. 9.

TRADE MARKS ACTS, 1905 TO 1919. [TRADE MARKS. £2.]

APPLICATION FOR HEARING BY THE REGISTRAR.

SIR,

In reply to your Notice dated the giving of (*a*) a date on which you will hear the arguments in the case of (*b*) Opposition No. to Application No. or (*c*) application that the entry on the Register in respect of Trade Mark No. may be rectified or removed, I beg to say that I intend to appear before you on the date you have fixed, namely the day of , 19 .

I am, Sir,
Your obedient Servant,

To the Registrar,
Patent Office, Trade Marks Branch,
25, *Southampton Buildings, Chancery Lane,*
*London, W.C.*2.

(*a*) Here insert address.
(*b*) and (*c*) Strike out words which are inapplicable.

FORM O No. 1.

NOTICE OF NON-COMPLETION OF REGISTRATION.

No. .

The Registrar has to call your attention to section 18 of the Trade Marks Acts, 1905 to 1919, and to Rule 57 of the Trade Marks Rules made thereunder. The section and the Rule are printed on the back hereof.

Your application numbered as above was made on the day

of , 19 . Registration has not been completed by reason of your default. Unless it is completed within days from this date the application will be treated as abandoned.

Dated this day of , 19 .

To .

The Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane,
London, W.C.2.

FORM TM No. 10.

[TRADE MARKS. Fee 4, 4*a* or 4*b*.]

TRADE MARKS ACTS, 1905 TO 1919.

FEE FOR REGISTRATION OF A TRADE MARK.

SIR,

In reply to your request I hereby transmit the prescribed fee for the registration of the Trade Mark No. in Class .

I am, Sir,
Your obedient Servant,
*

Dated the day of , 19 .

To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane,
London, W.C.2.

* Signature.

FORM O No. 2.

TRADE MARKS ACTS, 1905 TO 1919.

CERTIFICATE OF REGISTRATION UNDER SECTION 17 (not for use in legal proceedings, nor for obtaining Registration abroad).

To .

I hereby certify, pursuant to Rule 61 of the T.M. Rules, 1920, that the Trade Mark in your application No. was duly advertised in No. of the Trade Marks Journal and has been registered in your name in Class , in respect of the goods specified by you, viz.:—

Witness my hand this day of , 19 .

(Seal of Patent Office.) Registrar.

Registration will continue in force for 14 years from the date of this application, viz.:— , and may be renewed at the expiration of each period of 14 years.

The Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane,
London, W.C.2.

FORM TM No. 11.

TRADE MARKS ACTS, 1905 TO 1919.

[TRADE MARKS. Fee 8, 8*a* or 8*b*.]

RENEWAL OF REGISTRATION BEFORE NOTICE GIVEN.

I hereby leave the prescribed fee of for the renewal of the registration of the Trade Mark No. , in Class .

Dated the day of , 19 .

To the Registrar,
Patent Office, Trade Marks Branch,
25, *Southampton Buildings, Chancery Lane,*
*London, W.C.*2.

N.B.—This Form must be indorsed with the name and address of the person leaving the same.

FORM O No. 3.

TRADE MARKS ACTS, 1905 TO 1919.

NOTICE BEFORE REMOVAL OF TRADE MARK FROM THE REGISTER, UNDER SECTION 30.

The Registrar hereby gives you notice that in conformity with the provisions of section 30 of the Act of 1905 (printed at back hereof), your Trade Mark No. , registered in Class , will be removed from the Trade Marks Register, unless the prescribed fee of (payable by Form TM No. 12) be received at this Office *before* the day of , 19 , on which date the existing registration will expire.

A stamped Form TM No. 12, for payment of the fee, may be obtained as directed at the back of this Notice.

Dated this day of , 19 .

To .

The Patent Office, Trade Marks Branch,
25, *Southampton Buildings, Chancery Lane,*
*London, W.C.*2.

Cheques, money orders, or cash cannot be accepted in payment of fees.

FORM O No. 4.

TRADE MARKS ACTS, 1905 TO 1919.

SECOND NOTICE.

NOTICE BEFORE REMOVAL OF TRADE MARK FROM THE REGISTER, UNDER SECTION 30.

The Registrar hereby gives you notice that, in conformity with the provisions of section 30 of the Act of 1905 (printed at back hereof), your Trade Mark No. , registered in Class , will be removed from the Trade Marks Register, unless the prescribed fee of (payable by Form TM No. 12) be received at

Cheques, money orders, or cash cannot be accepted in payment of fees.

this Office *before* the day of , 19 , on which date the existing registration will expire.

If the above fee be not paid *before* the date above named, the Trade Mark will, after the end of one month from the date on which the omission to pay the fee has been advertised in the Trade Marks Journal, be removed from the Trade Marks Register, unless an *additional* fee of £1 (payable by Form TM No. 13) be remitted.

Stamped Forms, for payment of renewal fees, may be obtained as directed at the back of this Notice.

Dated the day of , 19 .

To .

The Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane,
London, W.C.2.

FORM TM No. 12.

[TRADE MARKS. Fee 8, 8*a* or 8*b*.]

TRADE MARKS ACTS, 1905 TO 1919.

RENEWAL OF REGISTRATION OF MARK AFTER NOTICE.

SIR,

In pursuance of the notice received from you, I hereby transmit the prescribed fee of for Renewal of Registration of the Trade Mark No. , in Class .

Dated the day of , 19 .

To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane,
London, W.C.2.

N.B.—This Form must be indorsed with the name and address of the person transmitting the same.

FORM TM No. 13.

[TRADE MARKS. £1.]

TRADE MARKS ACTS, 1905 TO 1919.

ADDITIONAL FEE OF £1 TO ACCOMPANY RENEWAL FEE (FORM TM No. 12), WITHIN ONE MONTH AFTER ADVERTISEMENT OF NON-PAYMENT OF RENEWAL FEE.

SIR,

In pursuance of the notices issued by you, I hereby transmit the additional fee of £1 (along with Form TM No. 12) for the renewal of the Registration of the Trade Mark No. in Class .

Dated the day of , 19 .

To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane,
London, W.C.2.

N.B.—This Form must be indorsed with the name and address of the person transmitting the same.

FORM TM No. 14.

TRADE MARKS ACTS, 1905 TO 1919. [TRADE MARKS. £2.]

RESTORATION OF TRADE MARK WHERE REMOVED FOR NON-PAYMENT OF FEE.

(*To accompany Form TM No.* 12.)

SIR,

In pursuance of the notices issued by you, I hereby transmit the additional fee of £2 (along with Form TM No. 12) for restoration to the Trade Marks Register of the Trade Mark No. in Class .

Dated the day of , 19 .

To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane,
*London, W.C.*2.

N.B.—This Form must be indorsed with the name and address of the person transmitting the same.

FORM TM No. 15.

TRADE MARKS ACTS, 1905 TO 1919. [TRADE MARKS. Fee 6 or 6*a*.]

JOINT REQUEST BY REGISTERED PROPRIETOR AND ASSIGNEE TO REGISTER THE ASSIGNEE AS SUBSEQUENT PROPRIETOR OF A TRADE MARK.

We (*a*) and (*b*) hereby request, under Rule 70, that the name of (*c*) carrying on business as (*d*) at (*e*) may be entered in the Register of Trade Marks as proprietor of the Trade Mark No. in Class as from the (*f*) by virtue of (*g*)

(Signatures)

Dated this day of , 19 .

To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane,
*London, W.C.*2.

N.B.—The instrument under which the assignee claims should accompany this form.

(*a*) Name and address of registered proprietor.
(*b*) Full name and address and nationality of assignee.
(*c*) Name of assignee.
(*d*) Trade or business of assignee.
(*e*) Address of assignee.
(*f*) Actual date on which the business was taken over.
(*g*) Full particulars of the instrument, if any, or statement of case.

FORM TM No. 16.

[TRADE MARKS Fee 6 or 6*a*.]

TRADE MARKS ACTS, 1905 TO 1919.

REQUEST TO ENTER NAME OF SUBSEQUENT PROPRIETOR OF THE TRADE MARK UPON THE REGISTER.

I (or We) (*a*) hereby request that you will enter my (or our) name in the Register of Trade Marks as proprietor (or proprietors) of Trade Mark No. in Class , as from the (*b*)

I am (or We are) entitled to the said Trade Mark and to the goodwill of the business concerned in the goods with respect to which the said Trade Mark is registered, by virtue of (*c*)

My (or our) address for service is

(*d*)

Dated this day of , 19 .

To the Registrar,
Patent Office, Trade Marks Branch,
25, *Southampton Buildings, Chancery Lane,*
*London, W.C.*2.

N.B.—The instrument under which the applicant claims should accompany this form.

(*a*) Here insert full name, address, nationality and description.
(*b*) Actual date on which the business was taken over.
(*c*) Here insert full particulars of the instrument, if any, or statement of case.
(*d*) Signature.

FORM TM No. 17.

TRADE MARKS ACTS, 1905 TO 1919.

DECLARATION (ONLY TO BE FURNISHED WHEN REQUESTED BY REGISTRAR) IN SUPPORT OF STATEMENT OF CASE ACCOMPANYING FORM TM No. 15 OR 16.

I, , of , do hereby solemnly and sincerely declare that the particulars set out in the statement of case, exhibit marked and left by me in connection with my request to be registered as subsequent proprietor of the Trade Mark, No. , in Class , are true and comprise every material fact and document affecting the proprietorship of the said Trade Mark as above claimed.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

(*a*)

Declared at this day of , 19 .

Before me,

(*b*)

To the Registrar,
Patent Office, Trade Marks Branch,
25, *Southampton Buildings, Chancery Lane,*
*London, W.C.*2.

(*a*) To be signed here by the person making the declaration.
(*b*) Signature and title of the authority before whom the declaration is made.

FORM TM No. 18.

TRADE MARKS ACTS, 1905 TO 1919.

[TRADE MARKS. Fee 11 or 11*a*.]

NOTICE OF APPLICATION FOR ALTERATION OF ADDRESS ON REGISTER OF TRADE MARKS.

In the matter of the Trade Mark, No. registered in Class .

I, , of , the registered proprietor of the Trade Mark numbered as above, desire that my address on the Register of Trade Marks be altered to .

Dated this day of , 19 .

*

To the Registrar,
Patent Office, Trade Marks Branch,
25, *Southampton Buildings, Chancery Lane,*
London, W.C.2.

* Signature of proprietor.

FORM TM No. 19.

TRADE MARKS ACTS, 1905 TO 1919.

[TRADE MARKS. £5.]

APPLICATION TO PERMIT AN APPORTIONMENT OF TRADE MARKS.

In the matter of the Registered Trade Marks Nos. .

We, being the parties interested within the meaning of section 23 of the Trade Marks Act, 1905, in certain marks of who has ceased to carry on business, request you to permit an apportionment of those marks amongst the persons in fact continuing the business. With this application we send a case in pursuance of Rule 82.

(Signed)

(Signed)

Dated this day of , 19 .

To the Registrar,
Patent Office, Trade Marks Branch,
25, *Southampton Buildings, Chancery Lane,*
London, W.C.2.

FORM TM No. 20.

[TRADE MARKS. 10*s.*]

TRADE MARKS ACTS, 1905 TO 1919.

REQUEST FOR CORRECTION OF CLERICAL ERROR OR FOR PERMISSION TO AMEND APPLICATION.

SIR,

I hereby request that

*

Dated this day of , 19 .

To the Registrar,
Patent Office, Trade Marks Branch,
25, *Southampton Buildings, Chancery Lane,*
*London, W.C.*2.

* Signature.

FORM TM No. 21.

[TRADE MARKS. Fee 7 or 7*a*.]

TRADE MARKS ACTS, 1905 TO 1919.

REQUEST TO ENTER CHANGE OF NAME OF REGISTERED PROPRIETOR OF TRADE MARK UPON THE REGISTER.

I (*a*), , hereby request that you will enter (*b*) name (*c*) in the Register of Trade Marks as proprietor of the Trade Mark No. in Class .

(*d*) entitled to the said Trade Mark and to the goodwill of the business concerned in the goods with respect to which the said Trade Mark is registered.

There has been no change in the actual proprietorship of the said Trade Mark, but (*e*)

*

Dated this day of , 19 .

To the Registrar,
Patent Office, Trade Marks Branch,
25, *Southampton Buildings, Chancery Lane,*
*London, W.C.*2.

(*a*) *Or* We. Here insert name, address, and description.
(*b*) My *or* our.
(*c*) *Or* names.
(*d*) I am *or* We are.
(*e*) Here state the circumstances under which the change of name took place.
* Signature.

FORM TM No. 22.

[TRADE MARKS. 10*s*.]

TRADE MARKS ACTS, 1905 TO 1919.

APPLICATION BY PROPRIETOR OF REGISTERED TRADE MARK TO CANCEL ENTRY ON REGISTER.

Trade Mark, No. , Class , advertised in Trade Marks Journal, No. , page .

Name of Registered Proprietor .

Place of Business .

Description .

I, the undersigned, , of [*or* I, the undersigned, ,

a member of the firm of , of , on behalf of my said firm] apply that the entry upon the Register of Trade Marks of the Trade Mark No. , in Class , may be cancelled.

*

Dated this day of , 19 .

To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane,
London, W.C.2.

* Signature.

FORM TM No. 23.

TRADE MARKS ACTS, 1905 TO 1919. [TRADE MARKS. 10*s.*]

REQUEST TO STRIKE OUT GOODS FROM THOSE FOR WHICH A TRADE MARK IS REGISTERED.

I, , of , hereby request that you will strike out from the goods for which the Trade Mark No. is registered in Class .

*

Dated this day of , 19 .

To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane,
London, W.C.2.

* Signature.

FORM TM No. 24.

TRADE MARKS ACTS, 1905 TO 1919. [TRADE MARKS. 10*s.*]

REQUEST TO ENTER DISCLAIMER OR MEMORANDUM RELATING TO A TRADE MARK.

I, , of , hereby request that you will enter in the Register in connection with Trade Mark No. in Class the following , namely—

*

Dated this day of , 19 .

To the Registrar,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, Chancery Lane,
London, W.C.2.

* Signature.

FORM TM No. 25.

[TRADE MARKS. Fee 25 or 25*a*.]

TRADE MARKS ACTS, 1905 TO 1919.

APPLICATION UNDER SECTION 34 OF THE ACT OF 1905 TO ADD TO OR ALTER A TRADE MARK.

In the matter of the Trade Mark,
No. in Class .

Application is hereby made on behalf of the registered proprietor of the Trade Mark numbered as above to alter it in the following particulars, that is to say (*a*)—

Four copies of the mark as it will appear when so altered are filed herewith.

(Signed)

Dated this day of , 19 .

To the Registrar,
Patent Office, Trade Marks Branch,
25, *Southampton Buildings, Chancery Lane,*
*London, W.C.*2.

(*a*) Here fill in full particulars.

FORM TM No. 26.

[TRADE MARKS. £3.]

TRADE MARKS ACTS, 1905 TO 1919.

APPLICATION FOR THE RECTIFICATION OF THE REGISTER OR THE REMOVAL OF A TRADE MARK FROM THE REGISTER.

(*To be accompanied by an unstamped copy and a statement of case in duplicate.*)

In the matter of the Trade Mark
No. .

* I, , hereby apply that the entry on the Register in respect of the above-mentioned Trade Mark may be rectified or removed.

The grounds of my application are as follows:—

(Signed)

Dated this day of , 19 .

Address for Service:—

To the Registrar,
Patent Office, Trade Marks Branch,
25, *Southampton Buildings, Chancery Lane,*
*London, W.C.*2.

* Here state full name and address.

FORM TM No. 27.

[TRADE MARK. £2.]

TRADE MARKS ACTS, 1905 TO 1919.

APPLICATION FOR LEAVE TO INTERVENE IN PROCEEDINGS FOR THE RECTIFICATION OF THE REGISTER OR THE REMOVAL OF A TRADE MARK FROM THE REGISTER.

In the matter of Trade Mark
No. .

* I, , hereby apply for leave to intervene in the proceedings

for the rectification or removal of the entry on the Register in respect of the above-mentioned Trade Mark.

My interest in the Trade Mark is

(Signed)

Dated this day of , 19 .

Address for Service:—

To the Registrar,
Patent Office, Trade Marks Branch,
25, *Southampton Buildings, Chancery Lane,*
London, W.C.2.

* Here state full name and address.

FORM TM No. 28.

TRADE MARKS ACTS, 1905 TO 1919. [TRADE MARKS. £1.]

REQUEST FOR SEARCH UNDER RULE 93.

You are hereby requested to search under Rule 93 in Class to ascertain whether any Trade Marks are on record which resemble the Trade Mark sent herewith in duplicate each mounted on a half sheet of foolscap.

*
†

Dated this day of , 19 .

To the Registrar,
Patent Office, Trade Marks Branch,
25, *Southampton Buildings, Chancery Lane,*
London, W.C.2.

* Signature.
† Address.

FORM SHEFFIELD No. 1.

TRADE MARKS ACTS, 1905 TO 1919. [CORPORATE MARK. £5.]

REQUEST TO ENTER A MARK UNDER SECTION 63, SUB-SECTION (2) OF THE ACT OF 1905.

You are hereby requested to register the accompanying Old Corporate Mark in Class in respect of in the name of (*a*) who claims to be the proprietor thereof.

(Signed)

Dated this day of , 19 .

To the Cutlers' Company,
Cutlers' Hall, Sheffield.

(*a*) Insert full name, address, description and nationality of applicant.

COTTON No. 1.

[STAMP. £1.]

TRADE MARKS ACTS, 1905 TO 1919.

COTTON MARKS.

APPLICATION FOR REGISTRATION OF TRADE MARK IN PART A. OF THE REGISTER.

(To be accompanied by an unstamped duplicate of this Form, and also by four Additional Representations on Form Cotton No. 3.)

One representation to be fixed within the square.

Representations of a larger size may be folded, but must then be mounted upon cloth and affixed hereto.

Application is hereby made for Registration in Part A. of the Register of the accompanying Trade Mark in Class in respect of (*a*) in the name of (*b*) [*Address, description and nationality*] (*c*) trading as who claim to be the proprietor thereof.

The said Trade Mark has not hitherto been used by the applicant upon or in connection with the above-mentioned goods, but is proposed to be so used [*or* (*d*) The said Trade Mark has been used by the applicant [and/or by the predecessors in business of the applicant] upon or in connection with the above-mentioned goods since the , 19].

(Signed)

Dated the day of , 19 .

To the Keeper of Cotton Marks,
Manchester Branch of the Trade Marks Registry,
501, *Royal Exchange, Manchester.*

(*a*) Only goods contained in one and the same class may be set out here. A separate application form is required for each separate class.

(*b*) The names of all the partners in a firm must be given in full.

(*c*) If the applicant is outside the U.K. an address for service in the U.K. must be given before the application can be proceeded with.

(*d*) Strike out the alternative paragraph which does not apply to the case.

COTTON No. 2.

TRADE MARKS ACTS, 1905 TO 1919. [STAMP. £1.]

COTTON MARKS.

APPLICATION FOR REGISTRATION OF TRADE MARK IN PART B. OF THE REGISTER.

(To be accompanied by an unstamped duplicate of this Form, and also by four Additional Representations on Form Cotton No. 3.)

One representation to be fixed within the square.

Representations of a larger size may be folded, but must then be mounted upon cloth and affixed hereto.

Application is hereby made for Registration in Part B. of the Register of the accompanying Trade Mark in Class in respect of (*a*) in the name of (*b*) [*Address, description and nationality*] (*c*) trading as who claim to be the proprietor thereof, having used it in respect of the said goods for not less than two years prior to the date of this application, the date of its first user being .

(Signed)

Dated the day of , 19 .

To the Keeper of Cotton Marks,
Manchester Branch of the Trade Marks Registry,
501, *Royal Exchange, Manchester.*

STATUTORY DECLARATION AS TO USER.

(To be indorsed on Form Cotton No. 2.)

I, , of , do hereby solemnly and sincerely declare that have *bonâ fide* used the mark shown on the other side hereof as a Trade Mark in respect of the goods mentioned within the United Kingdom of Great Britain and Ireland since the .

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

*

Declared at this day of , 19 .

Before me,

†

(*a*) Only goods contained in one and the same class may be set out here. A separate application form is required for each separate class.

(*b*) The names of all the partners in a firm must be given in full.

(*c*) If the applicant is outside the U.K. an address for service in the U.K. must be given before the application can be proceeded with.

* Signature of declarant.

† Signature of authority before whom declaration is made.

COTTON No. 3.

TRADE MARKS ACTS, 1905 TO 1919.

COTTON MARKS.

ADDITIONAL REPRESENTATION OF TRADE MARK TO ACCOMPANY APPLICATION FOR REGISTRATION.

One representation of the Trade Mark to be affixed within this square. It must correspond *exactly*, in all respects, with the representation affixed to the Application Form.

Any representation of a larger size than foolscap may be folded, but must then be mounted upon cloth and affixed hereto.

Class .
Description of Goods .
Length of User (if any) .
Name of Applicant .
Address .
Description .

Four of these Additional Representations of the Trade Mark must accompany *each* Form of Application.

COTTON No. 4.

STAMP. 10*s*.]

TRADE MARKS ACTS, 1905 TO 1919.

COTTON MARKS.

REQUEST FOR CERTIFICATE UNDER SUB-SECTION (12) OF SECTION 64.

SIR,

You are hereby requested to issue a certified copy of the application numbered and dated the day of , 19 , for registration in Class of the Cotton Mark of which a facsimile is sent herewith, setting forth in such certificate the length of time of user (if any) of such mark as stated on the application, and any other particulars you may deem necessary.

Dated this day of , 19 .

(Signed)
Address

To the Keeper of Cotton Marks,
Manchester Branch of the Trade Marks Registry,
501, *Royal Exchange, Manchester.*

COTTON No. 5.

TRADE MARKS ACTS, 1905 TO 1919. [STAMP. 10*s.*]

COTTON MARKS.

REQUEST FOR CERTIFICATE OF KEEPER OF COTTON MARKS AS TO A TRADE MARK ENTERED IN THE MANCHESTER REGISTER.

In the matter of the Trade Mark
No. in Class .

SIR,

I hereby request you to furnish me with your Certificate of Registration of the Mark numbered as above for use*

Dated this day of , 19 .

(Signed)
Address

To the Keeper of Cotton Marks,
Manchester Branch of the Trade Marks Registry,
501, *Royal Exchange, Manchester.*

* Here state the purpose for which the certificate is required, *i.e.*, whether for use in legal proceedings, or for obtaining registration abroad, or for what other purpose.

COTTON No. 6.

TRADE MARKS ACTS, 1905 TO 1919. [STAMP. £1.]

COTTON MARKS.

CONTINUANCE FOR QUOTATION OF MARK IN COLLECTION OF REFUSED MARKS.

SIR,

In pursuance of the notice received from you, I hereby transmit the prescribed fee for the continuance for quotation in the Collection of Refused Marks of the Mark No. in Class .

I am, Sir,
Your obedient servant,
Name
Address

Dated this day of , 19 .

To the Keeper of Cotton Marks,
Manchester Branch of the Trade Marks Registry,
501, *Royal Exchange, Manchester.*

MB No. 1.

TRADE MARKS ACTS, 1905 TO 1919.

COTTON MARKS.

CERTIFICATE UNDER SUB-SECTION (12) OF SECTION 64 OF THE ACT OF 1905.

Manchester Branch of the Trade Marks Registry,
501, Royal Exchange,
Manchester.

It is hereby certified by the Keeper of Cotton Marks, that a true copy of the application numbered and dated the

day of , 19 , for registration in Class of the Cotton Mark therein referred to is contained in the paper hereto annexed and that a fac-simile of the said mark is attached thereto, and that the length of time of user of such mark as stated on the application is (*a*) and that the said mark is on deposit at this Office.

Witness my hand this day of , 19 .

(Seal of Patent Office.)

Keeper of Cotton Marks.

(*a*) Space for any other particulars the Keeper may deem necessary.

FORM TM No. 29.

[TRADE MARKS. £2.]

TRADE MARKS ACTS, 1905 TO 1919.

APPEAL FROM THE REGISTRAR TO THE BOARD OF TRADE.

I (*a*), , of (*a*) , hereby give notice of my intention to appeal to the Board of Trade from (*b*) of the Registrar of the day of , 19 , whereby he (*c*)

Accompanying this notice is a statement of my case for the decision of the Board of Trade.

(Signed)

Dated this day of , 19 .

To the Registrar,
Patent Office, Trade Marks Branch,
25, *Southampton Buildings, Chancery Lane,*
*London, W.C.*2.

(*a*) Here insert full name and address of appellant.
(*b*) Here insert "the decision" or "that part of the decision" as the case may be.
(*c*) Here insert the decision complained of.

FORM TM No. 30.

[TRADE MARKS. £1.]

TRADE MARKS ACTS, 1905 TO 1919.

NOTICE OF ORDER OF COURT FOR ALTERATION OR RECTIFICATION OF REGISTER OF TRADE MARKS.

In the matter of the Trade Mark,
No. , registered in Class
in the name of .

SIR,

Notice is hereby given that by an Order of the Court made on the day of , 19 , it was directed that

An Office Copy of the Order of the Court is enclosed herewith.

Dated this day of , 19 .

*

To the Registrar,
Patent Office, Trade Marks Branch,
25, *Southampton Buildings, Chancery Lane,*
*London, W.C.*2.

* To be signed by the person interested or his agent.

FORM TM No. 31.

TRADE MARKS ACTS, 1905 TO 1919. [TRADE MARKS. £2.]

REQUEST FOR GENERAL CERTIFICATE OF REGISTRAR (OTHER THAN CERTIFICATE FOR USE IN LEGAL PROCEEDINGS OR FOR USE IN OBTAINING REGISTRATION ABROAD).

In the matter of the Trade Mark,
No. in Class .

SIR,

I, , of , hereby request you to furnish me with your Certificate that (*a*)

(*b*)

Dated this day of , 19 .

To the Registrar,
Patent Office, Trade Marks Branch,
25, *Southampton Buildings, Chancery Lane,*
*London, W.C.*2.

(*a*) Here set out the particulars which the registrar is requested to certify.
(*b*) Signature.

FORM TM No. 32.

TRADE MARKS ACTS, 1905 TO 1919. [TRADE MARKS. £2.]

REQUEST FOR CERTIFICATE OF REFUSAL TO REGISTER A TRADE MARK.

In the matter of an Application for registration of a Trade Mark,
No. in Class .

SIR,

I, , of , the applicant in the above matter, hereby request you to furnish me with your Certificate of Refusal to register the said Trade Mark.

*

Dated this day of , 19 .

To the Registrar,
Patent Office, Trade Marks Branch,
25, *Southampton Buildings, Chancery Lane,*
*London, W.C.*2.

* Signature of applicant.

FORM TM No. 33.

[TRADE MARKS. Fee 19 or 19*a*.]

TRADE MARKS ACTS, 1905 TO 1919.

REQUEST FOR CERTIFICATE OF REGISTRATION OF TRADE MARK FOR USE IN OBTAINING REGISTRATION ABROAD.

In the matter of the Trade Mark, No. , registered in Class in the name of .

SIR,

I, , of , the registered proprietor of the above Trade Mark, hereby request you to furnish me with your Certificate of Registration for use in obtaining registration of the same in*

†

Dated this day of , 19 .

To the Registrar,
Patent Office, Trade Marks Branch,
25, *Southampton Buildings, Chancery Lane,*
*London, W.C.*2.

* Here state name of country in which registration is to be sought.
† Signature.

FORM TM No. 34.

[TRADE MARKS. £2.]

TRADE MARKS ACTS, 1905 TO 1919.

REQUEST FOR CERTIFICATE OF REGISTRATION OF TRADE MARK TO BE USED IN LEGAL PROCEEDINGS.

In the matter of the Trade Mark, No. , registered in Class in the name of .

SIR,

I, , of , the registered proprietor of the above Trade Mark, hereby request you to furnish me with your Certificate of Registration to be used in legal proceedings.

*

Dated this day of , 19 .

To the Registrar,
Patent Office, Trade Marks Branch,
25, *Southampton Buildings, Chancery Lane,*
*London, W.C.*2.

Dated this 9th day of March, 1920.

A. C. GEDDES,
President of the Board of Trade.

* Signature.

THIRD SCHEDULE.

Classification of Goods.

Class 1.—Chemical substances used in manufactures, photography, or philosophical research, and anti-corrosives.

Class 2.—Chemical substances used for agricultural, horticultural, veterinary, and sanitary purposes.

Class 3.—Chemical substances prepared for use in medicine and pharmacy.

Class 4.—Raw, or partly prepared, vegetable, animal, and mineral substances used in manufactures, not included in other Classes.

Class 5.—Unwrought and partly wrought metals used in manufacture.

Class 6.—Machinery of all kinds, and parts of machinery, except agricultural and horticultural machines and their parts included in Class 7.

Class 7.—Agricultural and horticultural machinery, and parts of such machinery.

Class 8.—Philosophical instruments, scientific instruments, and apparatus for useful purposes; instruments and apparatus for teaching.

Class 9.—Musical instruments.

Class 10.—Horological instruments.

Class 11.—Instruments, apparatus, and contrivances, not medicated, for surgical or curative purposes, or in relation to the health of men or animals.

Class 12.—Cutlery and edge tools.

Class 13.—Metal goods, not included in other Classes.

Class 14.—Goods of precious metals and jewellery, and imitations of such goods and jewellery.

Class 15.—Glass.

Class 16.—Porcelain and earthenware.

Class 17.—Manufactures from mineral and other substances for building or decoration.

Class 18.—Engineering, architectural, and building contrivances.

Class 19.—Arms, ammunition, and stores, not included in Class 20.

Class 20.—Explosive substances.

Class 21.—Naval architectural contrivances and naval equipments not included in other Classes.

Class 22.—Carriages.

Class 23.—(a) Cotton yarn; (b) Sewing cotton.

Class 24.—Cotton piece goods.

Class 25.—Cotton goods not included in other Classes.

Class 26.—Linen and hemp yarn and thread.

Class 27.—Linen and hemp piece goods.

Class 28.—Linen and hemp goods not included in other Classes.

Class 29.—Jute yarns and tissues, and other articles made of jute, not included in other Classes.

Class 30.—Silk, spun, thrown, or sewing.

Class 31.—Silk piece goods.

Class 32.—Silk goods not included in other Classes.

Class 33.—Yarns of wool, worsted, or hair.

Class 34.—Cloths and stuffs of wool, worsted, or hair.

Class 35.—Woollen and worsted and hair goods, not included in other Classes.

Class 36.—Carpets, floor-cloth, and oil-cloth.

Class 37.—Leather, skins unwrought and wrought, and articles made of leather not included in other Classes.

Class 38.—Articles of clothing.

Class 39.—Paper (except paper hangings), stationery, and book-binding.

Class 40.—Goods manufactured from india-rubber and gutta-percha not included in other Classes.

Class 41.—Furniture and upholstery.

Class 42.—Substances used as food or as ingredients in food.

Class 43.—Fermented liquors and spirits.

Class 44.—Mineral and aërated waters, natural and artificial, including ginger beer.

Class 45.—Tobacco, whether manufactured or unmanufactured.

Class 46.—Seeds for agricultural and horticultural purposes.

Class 47.—Candles, common soap, detergents; illuminating, heating, or lubricating oils; matches; and starch, blue, and other preparations for laundry purposes.

Class 48.—Perfumery (including toilet articles, preparations for the teeth and hair, and perfumed soap).

Class 49.—Games of all kinds and sporting articles not included in other Classes.

Class 50.—Miscellaneous:—

(1.) Goods manufactured from ivory, bone or wood, not included in other Classes.
(2.) Goods manufactured from straw or grass, not included in other Classes.
(3.) Goods manufactured from animal and vegetable substances, not included in other Classes.
(4.) Tobacco pipes.
(5.) Umbrellas, walking sticks, brushes and combs for the hair.
(6.) Furniture cream, plate powder.
(7.) Tarpaulins, tents, rick-cloths, rope (jute or hemp), twine.
(8.) Buttons of all kinds other than of precious metal or imitations thereof.
(9.) Packing and hose.
(10.) Other goods not included in the foregoing Classes.

Dated this 9th day of March, 1920.

A. C. Geddes,
President of the Board of Trade.

A guide to the classification containing an index of a very large number of goods, showing the appropriate class for each description of goods, is obtainable from the Patent Office free of charge, and also a pamphlet containing Instructions to Applicants.

APPENDIX E.

INTERNATIONAL AND COLONIAL ARRANGEMENTS.

Subject to minor details of procedure, such as giving an address for service in the United Kingdom (*a*) and providing security for costs (*b*), the trade marks of persons domiciled abroad are protected by our Courts and legislation in precisely the same manner as those of persons domiciled in the United Kingdom, and no distinction is drawn between British and foreign subjects (*c*).

Apart from this general principle, Great Britain is a party to an international convention mentioned below, and to various separate treaties which contain clauses relating to the mutual protection of trade marks. Provision was made by sects. 103 and 104 of the Act of 1883, now replaced by sect. 91 of the Patents and Designs Act, 1907, for giving effect to certain limited rights of priority, these provisions being made applicable by Orders in Council (*d*). It is by reference to these provisions and the general law of this country that the rights of all parties must be ascertained, no convention or treaty, as such, having the force of law (*e*). Such treaties and conventions are, however, matters of history which may be relevant in regard to the construction of subsequent legislation (*f*), and their existence and the fact of registration and user in the country of origin have been referred to as matters which may be entitled to weight (*g*). Treaties to which Great Britain is not a party may be material for the purpose of ascertaining the rights of British traders in foreign countries, as the rights accorded are not always limited to the case of subjects of the contracting States.

Apart from treaties with individual States, which may be found in Hertslet's State Papers, and articles in the different Treaties of Peace referred to in Appendix H., the general convention to which Great Britain is a party is known as the International Convention for

(*a*) Trade Marks Act, 1905, s. 14 (11), and Rules 9, 55.

(*b*) See *Apollinaris Co.* v. *Wilson* (1886), 31 Ch. D. 632; *Hurter's Appn.* (1887), W. N. 71; *Soc. des Verreries' T. M.* (1893), 10 R. P. C. 290; *Compagnie Générale, &c. T. M.s* (1891), 8 R. P. C. 446; *Apollinaris Co.'s T. M.s*, (1891) 1 Ch. 1; *Royal Worcester Corset Co.'s Appn.*, Seb. 270.

(*c*) *Collins Co.* v. *Brown* (1857), 3 K. & J. 423, and cases cited Seb. 99; *Panhard* v. *Panhard* (1901), 18 R. P. C. 405.

(*d*) See pp. 122, 222 for the text of these sections; and for a list of the Orders in Council, p. 184.

(*e*) *Carter Medicine Co.'s T. M.* (1892), 9 R. P. C. 401; *Californian Fig Syrup Co.'s T. M.* (1889), 6 R. P. C. 126; and cf., in regard to patents, *Vidal's Patent* (1898), 15 R. P. C. 721.

(*f*) Cf. *Eastman Photographic Co.'s Appn.* (1898), 15 R. P. C. p. 482.

(*g*) *National Cash Register Co.'s Appn.* (1917), 34 R. P. C. 273, 354; and see *Diamond T. Motor Co.'s Appn.* (1921), 38 R. P. C. p. 382; *Daimler Co.'s Appn.* (1916), 33 R. P. C. p. 340.

the Protection of Industrial Property, made at Paris in 1883, and revised at Brussels in 1900, and again at Washington in 1911. The revised text only is printed, as substantially all the parties to the original convention have ratified the revised articles. A list of the adherent States is printed on p. 184, and any changes since Jan. 1, 1922, may be ascertained from the *London Gazette* or the official journal of the International Bureau, *La Propriété Industrielle*, which may be inspected at the Patent Office Library. References are also given at p. 184, *post*, to the Orders in Council, and any Orders subsequent to Jan. 1, 1922, may be found in the current issues of Statutory Rules and Orders.

In addition to the above convention, there is an International Arrangement, signed at Madrid in 1891, and revised at Brussels in 1900 and at Washington in 1911, to which Great Britain is not a party (*h*), and there is also a Pan-American Convention, signed at Buenos Ayres in 1910.

The Madrid Convention provides for the registration at Berne of trade marks already registered in the country of origin, such registration, subject to certain qualifications, securing the same protection for the trade mark as if it had been registered in each of the adherent States. Such registration may be obtained by the subjects of States which are not parties to the Madrid arrangement, if they satisfy the conditions of Art. 3 of the Paris Convention (*i*).

The Pan-American Convention provided for two bureaux for registration, one at Havana for the Northern group of States, and one at Rio de Janeiro for the Southern group, such registration to secure protection in each of the contracting States. The necessary proportion of the Northern States have ratified, and the bureau at Havana has been established. At the date of publication, this is not the case with the Southern group, as ratification by one more State is required to make up the required two-thirds.

Some doubts have been expressed as to how far the Convention is effective in these circumstances (*k*). British subjects who register their trade marks at Washington can obtain the protection in other American States which the Convention affords (*l*). The Court in Cuba has applied the Convention by declaring void the registration of a trade mark in Cuba which was held to bear a deceptive resemblance to the trade mark which an American company had used in Cuba prior to the date of that registration (*m*).

(*h*) This must be distinguished from a convention also signed at Madrid in 1891, and revised at Washington in 1911, dealing with merchandise marks, to which Great Britain is a party.

(*i*) See p. 177. A translation of the Madrid arrangement is printed in Transactions of International Association for the Protection of Industrial Property, Vol. I., p. 111. A list of the contracting States is published annually in the January number of "La Propriété Industrielle."

(*k*) See Patents and Trade Marks Review (U.S.A.), Vol. XVIII., pp. 180, 224; Vol. XIX., p. 287. The text of the Convention is printed in Vol. IX., at p. 3445. The parties who have ratified are—Northern Group: U.S.A., Cuba, Costa Rica, Hayti, Honduras, Nicaragua, Panama, Santo Domingo; Southern Group: Bolivia, Brazil, Ecuador, Paraguay, Peru, Uruguay. See *ibid.*, Vol. XVIII., pp. 92, 257; Vol. XIX., p. 71.

(*l*) Trade Marks Journal, June 22, 1921, p. 1241.

(*m*) Patents and Trade Marks Review (U.S.A.), vol. 19, p. 97.

INTERNATIONAL CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY.

Union Convention of Paris of March 20, 1883, for the Protection of Industrial Property, revised at Brussels on December 14, 1900, and at Washington on June 2, 1911.

(*Translation.*)

ARTICLE 1.

The contracting countries constitute themselves into a Union for the protection of industrial property.

ARTICLE 2.

The subjects or citizens of each of the contracting countries shall in all the other countries of the Union, as regards patents, utility models, industrial designs or models, trade marks and trade names, indications of origin, and the suppression of unfair competition, enjoy the advantages that their respective laws now grant, or may hereafter grant, to their own subjects or citizens. Consequently, they shall have the same protection as the latter, and the same legal remedy against any infringement of their rights, provided they observe the conditions and formalities imposed on native subjects or citizens. No obligation as to the possession of a domicile or establishment in the country where protection is claimed shall be imposed on those who enjoy the benefits of the Union.

ARTICLE 3.

Subjects or citizens of countries not forming part of the Union, who are domiciled or who have real and effective industrial or commercial establishments in the territory of any of the countries of the Union, shall be assimilated to the subjects or citizens of the contracting countries.

ARTICLE 4.

(a.) Any person who has duly applied for a patent, the registration of a utility model, industrial design or model, or trade mark, in one of the contracting countries, or his legal representative or assignee, shall enjoy, for the purposes of registration in other countries, and reserving the rights of third parties, a right of priority during the periods hereinafter stated.

(b.) Consequently, subsequent registration in any of the other countries of the Union before the expiration of these periods shall not be invalidated through any acts accomplished in the interval, either, for instance, by another registration, by publication of the invention, or by the working of it by a third party, by the sale of copies of the design or model, or by use of the trade mark.

(c.) The above-mentioned periods of priority shall be twelve months for patents and utility models, and four months for industrial designs and models and trade marks.

(d.) Any person desiring to take advantage of the priority of a previous application must make a declaration giving particulars as to the date of such application and the country in which it was made. Each country will determine for itself the latest date at which such declaration must be made. The particulars referred to shall be stated in the publications issued by the competent authority, and in particular in the patents issued and the specifications relating thereto. The contracting countries may require any person making a declaration of priority to produce a copy of the application (with the specification, drawings, &c.) previously made, certified as correct by the authority by whom it was received. Such copies shall not require any legal authentication. They may also require that the declaration shall be accompanied by a certificate from the proper authority showing the date of the application, and also by a translation. No other formalities may be required for the declaration of priority at the time of application. Each of the contracting countries shall decide for itself what consequences shall follow the omission of the formalities prescribed by the present article, but such consequences shall in no case be more serious than the loss of the right of priority.

(e.) At later stages, further proof in support of the application may be required.

Articles 4 *bis and* 5 *relate only to patents.*

Article 6.

Every trade mark duly registered in the country of origin shall be admitted for registration and protected in the form originally registered in the other countries of the Union.

Nevertheless, the following marks may be refused or cancelled:—

1. Those which are of such a nature as to prejudice rights acquired by third parties in the country in which protection is applied for.

2. Those which have no distinctive character, or which consist exclusively of signs or indications which serve in trade to designate the kind, quality, quantity, destination, value, place of origin or date of production, or which have become customary in the current language, or in the *bonâ fide* and unquestioned usages of the trade of the country in which protection is sought.

In arriving at a decision as to the distinctiveness of the character of a mark, all the circumstances of the case must be taken into account, and, in particular, the length of time that such a mark has been in use.

3. Those which are contrary to morality or public order.

That country shall be deemed the country of origin where the applicant has his chief seat of business.

If this chief seat of business is not situated in one of the countries of the Union, the country to which the applicant belongs shall be deemed the country of origin.

Article 7.

The nature of the goods on which the trade mark is to be used can, in no case, form an obstacle to the registration of the trade mark.

ARTICLE 7 *bis*.

The contracting countries undertake to allow the registration of, and to protect, trade marks belonging to associations the existence of which is not contrary to the law of the country of origin, even if such associations do not possess an industrial or commercial establishment.

Nevertheless, each country shall be the sole judge of the particular conditions on which an association may be allowed to obtain protection for its marks.

ARTICLE 8.

A trade name shall be protected in all the countries of the Union without necessity of registration, whether it form part or not of a trade mark.

ARTICLE 9.

All goods illegally bearing a trade mark or trade name shall be seized on importation into those countries of the Union where this mark or name has a right to legal protection.

If the law of any country does not admit of seizure on importation, such seizure shall be replaced by prohibition of importation.

Seizure shall be effected equally in the country where the mark or name was illegally applied, or in the country to which the article bearing it may have been imported.

The seizure shall take place at the request either of the proper Government department or of any other competent authority, or of any interested party, whether individual or society, in conformity with the domestic law of each country.

The authorities are not bound to effect the seizure of goods in transit.

If the law of any country does not admit either of seizure upon importation, of prohibition of importation, or of seizure within the country, these measures shall be replaced by the remedies assured in such case to subjects or citizens by the law of such country.

ARTICLE 10.

The stipulations of the preceding article shall be applicable to every production which may falsely bear as indication of origin the name of a specified locality, when such indication shall be joined to a trade name of a fictitious character or used with intent to defraud.

Any producer, manufacturer, or trader engaged in the production, manufacture, or trade of such goods, and established either in the locality falsely designated as the place of origin, or in the district where the locality is situated, is to be deemed a party concerned.

ARTICLE 10 *bis*.

All the contracting countries undertake to assure to those who enjoy the benefits of the Union effective protection against unfair trade competition.

ARTICLE 11.

The contracting countries shall, in conformity with the legislation of each country, accord temporary protection to patentable inven-

tions, to utility models, and to industrial designs or models, as well as to trade marks, in respect of products which shall be exhibited at official, or officially recognised, international exhibitions held in the territory of one of them.

ARTICLE 12.

Each of the contracting countries agrees to establish a special Government department for industrial property and a central office for communication to the public of patents, utility models, industrial designs or models, and trade marks.

This department shall, as far as possible, publish an official periodical paper.

ARTICLE 13.

The International Office, established at Berne under the name "Bureau international pour la Protection de la Propriété industrielle," is placed under the high authority of the Government of the Swiss Confederation, which is to regulate its organisation and supervise its working.

The International Office will centralise information of every kind relating to the protection of industrial property, and will bring it together in the form of a general statistical statement, which will be distributed to all the Administrations. It will interest itself in all matters of common utility to the Union, and will edit, with the help of the documents supplied to it by the various Administrations, a periodical paper in the French language, dealing with questions regarding the object of the Union.

The numbers of this paper, as well as all the documents published by the International Office, will be circulated among the Administrations of the countries of the Union in the proportion of the number of contributing units as mentioned below. Such further copies as may be desired, either by the said Administrations, or by societies or private persons, will be paid for separately.

The International Office shall at all times hold itself at the service of members of the Union, in order to supply them with any special information they may need on questions relating to the international system of industrial property. It will furnish an annual report on its working, which shall be communicated to all the members of the Union.

The official language of the International Office will be French.

The expenses of the International Office will be borne by the contracting countries in common. In no case may they exceed the sum of 60,000 fr. per annum.

To determine the part which each country should contribute to this total of expenses, the contracting countries, and those which may afterwards join the Union, shall be divided into six classes, each contributing in the proportion of a certain number of units, namely:—

	Units.
1st class	25
2nd „	20
3rd „	15
4th „	10
5th „	5
6th „	3

These coefficients will be multiplied by the number of countries in each class, and the sum of the result thus obtained will supply the number of units by which the total expense has to be divided. The quotient will give the amount of the unit of expense.

Each of the contracting countries shall designate at the time of its accession the class in which it wishes to be placed.

The Government of the Swiss Confederation will superintend the expenses of the International Office, advance the necessary funds, and render an annual account, which will be communicated to all the other Administrations.

ARTICLE 14.

The present Convention shall be submitted to periodical revisions with a view to the introduction of amendments calculated to improve the system of the Union.

For this purpose, Conferences shall be held successively, in one of the contracting countries, between the delegates of the said countries.

The Administration of the country in which the Conference is to be held will make preparation for the transaction of that Conference, with the assistance of the International Office.

The Director of the International Office will be present at the meetings of the Conferences and will take part in the discussions, but without the privilege of voting.

ARTICLE 15.

It is agreed that the contracting countries respectively reserve to themselves the right to make separately, as between themselves, special arrangements for the protection of industrial property, in so far as such arrangements do not contravene the provisions of the present Convention.

ARTICLE 16.

Countries which are not parties to the present Convention shall be allowed to accede to it upon their request.

The accession shall be notified through the diplomatic channel to the Government of the Swiss Confederation, and by the latter to all the other countries.

It shall entail, as a matter of right, accession to all the clauses, as well as admission to all the advantages stipulated in the present Convention, and shall take effect one month after the dispatch of the notification by the Government of the Swiss Confederation to the other countries of the Union, unless a subsequent date has been indicated by the acceding country.

ARTICLE 16 *bis*.

The contracting countries have the right of acceding to the present Convention at any time on behalf of their Colonies, Possessions, Dependencies, and Protectorates, or of any of them.

For this purpose they may either make a general declaration, including all their Colonies, Possessions, Dependencies, and Protectorates in the accession, or may expressly name those included,

or may confine themselves to indicating those which are excluded therefrom.

This declaration shall be notified in writing to the Government of the Swiss Confederation and by the latter to all the other countries.

Under the same conditions, the contracting countries may denounce the Convention on behalf of their Colonies, Possessions, Dependencies, and Protectorates, or any of them.

ARTICLE 17.

The execution of the reciprocal engagements contained in the present Convention is subordinated, in so far as necessary, to the observance of the formalities and rules established by the constitutional laws of those of the contracting countries who are bound to procure the application of the same, which they engage to do with as little delay as possible.

ARTICLE 17 *bis*.

The Convention shall remain in force for an unlimited time, till the expiry of one year from the date of its denunciation.

This denunciation shall be addressed to the Government of the Swiss Confederation. It shall only affect the denouncing country, the Convention remaining in operation as regards the other contracting countries.

ARTICLE 18.

The present Act shall be ratified and the ratifications deposited at Washington not later than the 1st April, 1913. It shall come into force, as between the countries which ratify it, one month after the expiration of that period.

This Act, with its Final Protocol, shall replace, as regards relations between the countries which ratify it: the Convention of Paris of the 20th March, 1883; the Final Protocol annexed to that Act; the Protocol of Madrid of the 15th April, 1891, regarding the endowment of the International Office; and the Additional Act of Brussels of the 14th December, 1900. The above-mentioned Acts shall, however, remain in force as regards relations with countries which have not ratified the present Act.

ARTICLE 19.

The present Act shall be signed in a single copy, which shall be deposited in the archives of the Government of the United States. A copy, certified as correct, shall be forwarded by the latter to each of the Governments of the Union.

In witness whereof the respective Plenipotentiaries have signed the present Act.

Done at Washington, in a single copy, the 2nd June, 1911.

FINAL PROTOCOL.

(*Translation.*)

On proceeding to the signature of the Act concluded this day, the undersigned Plenipotentiaries have agreed as follows:—

To ARTICLE 1.

The words "industrial property" are to be taken in their broadest sense; they extend to all productions of the agricultural industries

(wines, corn, fruits, cattle, &c.) and of the mining industries (minerals, mineral waters, &c.).

To ARTICLE 2.

(a.) *relates only to patents.*

(b.) It is understood that the provision of article 2, which exempts the subjects or citizens of the Union countries from the obligation as to the possession of a domicile and establishment, is of the nature of an interpretation, and is consequently to apply to all rights resulting from the Convention of the 20th March, 1883, before the present Act comes into operation.

(c.) It is understood that the provisions of article 2 do not affect the legislation of each of the contracting countries as regards the procedure to be followed before the tribunals and the competence of those tribunals, nor as regards the election of domicile or appointment of an authorised agent which may be laid down in laws as to patents, utility models, trade marks, &c.

To ARTICLE 4.

Relates only to designs.

To ARTICLE 6.

It is understood that the provision of the first paragraph of article 6 does not exclude the right of requiring from the person registering the mark a certificate proving due registration in the country of origin, issued by the competent authority.

It is understood that the use of public armorial bearings, insignia or decorations, unless authorised by the competent authorities, or the use of official hall-marks or signs indicating an official warranty, which may be adopted by a Union country, may be regarded as contrary to public order in the sense of No. 3 of article 6.

Marks containing a reproduction of public armorial bearings, decorations or insignia, with the authorisation of the competent authorities, shall not, however, be considered as contrary to public order.

It is understood that a mark cannot be considered as contrary to public order solely on the ground that it does not conform to some provision of the trade marks laws, unless such provision itself relates to public order.

The present final Protocol, which shall be ratified at the same time as the Act concluded on this day, shall be considered as forming an integral part of, and shall have the same force, validity, and duration as the said Act.

In witness whereof the respective Plenipotentiaries have signed this Protocol.

Done at Washington, in a single copy, the 2nd June, 1911.

INTERNATIONAL AND COLONIAL ARRANGEMENTS.

Order in Council applying provisions of sects. 103 and 104 of Patents, Designs and Trade Marks Act, 1883, or sect. 91 of Patents and Designs Act, 1907.

Country.	Date.	Reference to Volume of Statutory Rules and Orders (under title "Patents").
†Austria	17 May, 1909.	1909, p. 614.
†Belgium	26 June, 1884.	Vol. 9, p. 5.
†Brazil	26 June, 1884.	Vol. 9, p. 5.
Bulgaria	14 July, 1921.	—
†Cuba	12 Jan., 1905.	1905, p. 270.
†Czecho-Slovakia	11 Mar., 1920.	1920, Vol. 2, p. 347.
Danzig	21 Nov., 1921.	-
Denmark (with Faroe Islands)	20 Nov., 1894.	Vol. 9, p. 13.
Dominican Republic	21 Oct., 1890.	Vol. 9, p. 11.
*Ecuador	16 May, 1893.	Vol. 9, p. 12.
Finland	11 Oct., 1921.	—
†France (Algeria and Colonies)	26 June, 1884.	Vol. 9, p. 5.
Germany	9 Oct., 1903.	Vol. 9, p. 18.
*Greece	15 Oct., 1894.	Vol. 9, p. 14.
*Honduras	26 Sept., 1901.	Vol. 9, p. 17.
†Hungary	17 May, 1909.	1909, p. 614.
†Italy	26 June, 1884.	Vol. 9, p. 5.
Japan	7 Oct., 1899.	Vol. 9, p. 15.
†Mexico	28 May, 1889.	Vol. 9, p. 9.
†Morocco (under French protection).	12 Feb., 1918.	1918, Vol. 2, p. 628.
†Netherlands	26 June, 1884.	Vol. 9, p. 5.
†Netherlands (Dutch East Indies)	17 Nov., 1888.	Vol. 9, p. 8.
†Surinam and Curacoa	17 May, 1890.	Vol. 9, p. 10.
Norway	9 July, 1885.	Vol. 9, p. 6.
*Paraguay	24 Sept., 1886.	Vol. 9, p. 7.
Poland	25 Nov., 1919.	1919, Vol. 2, p. 106.
†Portugal (with Azores and Madeira)	26 June, 1884.	Vol. 9, p. 5.
†Roumania	13 Oct., 1920.	1920, Vol. 2, p. 356.
†Serb-Croat-Slovene State	14 Feb., 1921.	—
†Spain	26 June, 1884.	Vol. 9, p. 5.
Sweden	9 July, 1885.	Vol. 9, p. 6.
†Switzerland	26 June, 1884.	Vol. 9, p. 5.
†Tunis	26 June, 1884.	Vol. 9, p. 5.
U. S. A.	12 July, 1887.	Vol. 9, p. 8.
*Uruguay	24 Sept., 1886.	Vol. 9, p. 7.
‡Australia	26 Mar., 1907.	1907, p. 773.
Ceylon	7 Aug., 1905.	1905, p. 268.
New Zealand	8 Feb., 1890.	Vol. 9, p. 1.
Trinidad and Tobago	12 Aug., 1907.	1907, p. 777.

† Also Parties to the Madrid arrangement for international registration.
* Not Parties to the Paris-Washington Convention.
‡ Australia is a Party to the Paris Convention as revised at Brussels but not to the revisions made at Washington.

Under the Foreign Jurisdiction Act, penalties have been imposed on British subjects committing offences against the Trade Marks Acts in Abyssinia, China, Egypt, Muskat, Morocco, Persia and Turkey, and in respect of offences against the Indian Trade Marks Acts in Bahrein, Muskat and Somaliland. See, for references, Index to Statutory Rules and Orders in force on Dec. 31, 1919.

APPENDIX F.

WAR AND PEACE LEGISLATION.

War and post-war legislation has touched the subject of trade marks at several points. Emergency legislation provided for the avoidance or suspension of the registration of trade marks, the proprietor of which was an enemy subject (*a*). Such suspension or avoidance, if exercised in the case of marks which were in fact distinctive of the goods of enemy nationals, though operative as regards statutory rights, might clearly leave unaffected the meaning attached by the public to the trade mark. Consequently, the principle acted upon in the exercise of the power by the Board of Trade was generally, as stated in a notice published in the Trade Marks Journal of Nov. 11th, 1914 (*b*), to grant suspension only in cases of word marks which were (1) the name of a patented article where a licence was granted under the patent protecting it; (2) the only name or only practicable name of an article manufactured under an expired patent; or (3) the name or the only practicable name of an article manufactured in accordance with a known process or a formula which had been published or was well known to the trade. Suspension was not generally granted in the case of pictorial devices.

Many trade marks may also be affected by orders of the Board of Trade vesting the goodwill of enemy concerns in the Custodian of enemy property (*c*), and by assignments of such goodwill by the Custodian to other traders. Trade marks were commonly excepted from such vesting orders, and it is not possible, without knowledge of the particular circumstances, to forecast the result of such partial severance of goodwill as may have been effected in any particular case, especially in view of the Peace legislation in regard to the restoration of enemy rights in industrial property (*d*). In considering such questions it must be borne in mind that, although statutory rights can be easily dealt with by the legislature or the authorities entrusted with powers by the legislature, the meaning attached by the public to a particular mark is a question of fact which cannot be altered by a stroke of the pen, though this may be altered by lapse of time and change of conditions. The character of the questions raised is illustrated by the *Chartreuse case* (*e*), but in that case the change of proprietorship of the mark by executive act was effected

(*a*) See p. 186.
(*b*) Manual of Emergency Legislation, Supplement No. 4, p. 386.
(*c*) See Trading with the Enemy Amendment Act, 1916 (5 & 6 Geo. 5, c. 105).
(*d*) P. 202.
(*e*) *Rey* v. *Lecouturier* (1910), 27 R. P. C. 268; and as to the limitations on assignments of trade marks, see p. 6, *ante*.

in a foreign country, and was operative there, though held inoperas to the rights in this country, and different considerations may arise in the present circumstances (*f*).

A complete examination of the different treaties of peace and their effect upon trade marks and former enemy businesses would be beyond the scope of this work. The most material clauses of the Treaty of Peace with Germany and the Order in Council relating thereto are printed hereafter, together with references to the other treaties and the material dates.

PATENTS, DESIGNS, AND TRADE MARKS (TEMPORARY RULES) ACT, 1914 (4 & 5 GEO. 5, c. 27), AS AMENDED BY THE PATENTS, DESIGNS, AND TRADE MARKS TEMPORARY RULES (AMENDMENT) ACT, 1914 (4 & 5 GEO. 5, c. 73).

NOTE: In sub-sect. (1) the words in brackets were introduced by sect. 1 (a) of the amending Act; the whole of sub-sect. (4) was added by sect. 1 (b) of the amending Act.

Extension of power to make rules.
7 Edw. vii. c. 29.
5 Edw. vii. c. 15.

1.—(1) The power of the Board of Trade under section eighty-six of the Patents and Designs Act, 1907, and section sixty of the Trade Marks Act, 1905, to make rules and to do such things as they think expedient for the purposes therein mentioned shall include power to make rules and to do such things as they think expedient for avoiding or suspending in whole or in part [any patent or licence the person entitled to the benefit of which is the subject of any State at war with His Majesty; for avoiding or suspending the registration, and all or any rights conferred by the registration, of any design or trade mark the proprietor whereof is a subject as aforesaid; for avoiding or suspending any application made by any such person under either of the said Acts; for enabling the Board to grant, in favour of persons other than such persons as aforesaid, on such terms and conditions, and either for the whole term of the patent or registration or for such less period, as the Board may think fit, licences to make, use, exercise, or vend, patented inventions and registered designs so liable to avoidance or suspension as aforesaid].

(2) In relation to rules made under this Act the provisions of sub-section (3) of section sixty of the Trade Marks Act, 1905, shall not apply.

(3) If the rules made under this Act so provide, the rules or any of them shall have effect as from the passing of this Act.

[(4) This Act shall apply to any person resident and carrying on business in the territory of a State at war with His Majesty as if he was a subject of that State; and the expression "subject of any State at war with His Majesty" shall, with reference to a company,

(*f*) The French Mixed Arbitral Tribunal in a recent case has held (1) that it has jurisdiction to decide questions arising in regard to the ownership of trade marks in France and elsewhere belonging to the former owners of a business carried on in France and sequestrated under the French laws dealing with enemy property, and (2) that in the case in question the rights in all countries passed to the purchaser of the business from the liquidator. See *Société Vinicole* v. *Mumm*, Recueil des Décisions des Tribunaux Arbitraux Mixtes, No. 1, p. 22; No. 8, p. 496. Proceedings in England relating to the trade marks in this country are pending, in which the authority of this decision is challenged.

include any company the business whereof is managed or controlled by such subjects, or is carried on wholly or mainly for the benefit or on behalf of such subjects, notwithstanding that the company may be registered within His Majesty's dominions; and, where a patent has been granted to any person in respect of an invention declared in the application or any specification to have been communicated to him by some other person, that other person shall, for the purposes of this Act, be deemed to be the person entitled to the benefit of the patent unless the contrary is proved.]

2. This Act may be cited as the Patents, Designs, and Trade Marks Temporary Rules (Amendment) Act, 1914; and the Patents, Designs, and Trade Marks (Temporary Rules) Act, 1914, and this Act may be cited as the Patents, Designs, and Trade Marks (Temporary Rules) Acts, 1914.

Temporary Rules were made under this Act (S. R. & O., Nos. 1255 and 1256 of 1914). The former affected trade marks by giving power to the comptroller during the continuance of the Rules to extend the time for doing any act required under the Trade Marks Act, 1905. The latter made provision for the avoidance or suspension of trade marks in the following terms, omitting parts relating only to procedure:—

1. The Board of Trade may, on the application of any person, and subject to such terms and conditions, if any, as they may think fit, order the avoidance or suspension, in whole or in part, of the registration of any trade mark the proprietor of which is a subject of any State at war with His Majesty, and the Board, before granting any such application, may require to be satisfied on the following heads:—

(a) That the proprietor is the subject of a State at war with His Majesty;

(b) That the person applying intends to manufacture, or cause to be manufactured, the goods or any of them in respect of which the trade mark is registered;

(c) That it is in the general interests of the country or of a section of the community, or of a trade, that the registration of the trade mark should be so avoided or suspended.

. . . . . .

The Board of Trade may at any time, in their absolute discretion, revoke any avoidance or suspension of any registration of a trade mark ordered by them.

. . . . . .

PEACE TREATIES WITH DIFFERENT ENEMY COUNTRIES.

Country.	Order providing for enforcing terms.	Date of signature.	Date of coming into force and of termination of state of war.
Germany	S. R. O. 1517 of 1919.	28th June, 1919.	10th Jan., 1920. (S. R. O. 264 of 1920.)
Austria	S. R. O. 1613 of 1920.	10th Sept., 1919.	16th July, 1920. (S. R. O. 1347 of 1920.)
Bulgaria	S. R. O. 1614 of 1920.	27th Nov., 1919.	9th Aug., 1920.) (S. R. O. 1612 of 1920.)
Hungary	S. R. O. 1285 of 1921.	4th June, 1920.	26th July, 1921. S. R. O. 1284 of 1921.)
Ottoman Empire	——	10th Aug., 1920.	——

By S. R. O. 1276 of 1921, the 31st Aug., 1921, was fixed as the date of the termination of the war under the Termination of the Present War (Definition) Act, 1918 (8 & 9 Geo. 5, c. 59), but this does not affect the relations with the Ottoman Empire.

TREATY OF PEACE ORDER, 1919* (GERMANY), No. 1517.

1. The sections of the Treaty set out in the Schedule to this Order shall have full force and effect as law, and for the purpose of carrying out the said sections the following provisions shall have effect:—

(i) *to* (xiii) *relate to enemy debts and clearing office.*

(xiv) All decisions of the Mixed Arbitral Tribunal constituted under Section VI. of Part X. of the Treaty, if within the jurisdiction of that tribunal, shall be final and conclusive and binding on all courts.

(xv) For the purpose of enforcing the attendance of witnesses before the Mixed Arbitral Tribunal, wherever sitting, whether within or without His Majesty's Dominions, and compelling the production before the tribunal of documents, a Secretary of State shall have power to issue orders which shall have the like effect as if the proceedings before the tribunal were an action in a court and the order were a formal process issued by that court in the due exercise of its jurisdiction, and shall be enforceable by that court accordingly, and disobedience to any such order shall be punishable as contempt of court.

(xvi) All property, rights and interests within His Majesty's Dominions or Protectorates belonging to German nationals at the date when the Treaty comes into force (not being property rights or interests acquired under any general licence issued by or on behalf of His Majesty), and the net proceeds of their sale, liquidation or other dealings therewith, are hereby charged—

* * * * *

The sub-sections which follow set out the payments with which the property is charged. They are not material to this subject.

(xvii) With a view to making effective and enforcing such charge as aforesaid—

* * * * *

Sub-sections (a), (b), (c) *and* (e) *are not material to this subject.*

(d) the Board of Trade may by order vest in the Custodian any property, rights and interests subject to the charge, or the right to transfer the same, and for that purpose [sub-sections (1) to (4) of] section four of the Trading with the Enemy (Amendment) Act, 1916, shall apply as if such property, rights and interests were property belonging to an enemy or enemy subject;

* * * * *

(xviii) The time at which the period of prescription or limitation of right of action referred to in Article 300 shall begin again to run shall be at the expiration of six months after the coming into force of the Treaty, and the period to be allowed within which presentation of negotiable instru-

* Amendments have been introduced by Orders Nos. 1410 and 2461 of 1920, and Nos. 268 and 968 of 1921. These do not substantially affect any question of trade mark rights, and are printed in square brackets.

ments for acceptance or payment and notice of non-acceptance or non-payment or protest may be made under Article [301] shall be [nineteen] months from the coming into force of the Treaty.

(xix) Rules made during the war by any recognised Exchange or Commercial Association providing for the closure of contracts entered into before the war by an enemy and any action taken thereunder are hereby confirmed subject to the provisoes contained in paragraph 4 (a) of the Annex to Section V. of Part X. of the Treaty.

(xx) There shall be imposed on rights of industrial, literary or artistic property (with the exception of trade marks) acquired before or during the war, or which may be acquired hereafter, by German nationals, such limitations, conditions or restrictions as the Board of Trade may prescribe, for the purpose, in the manner, in the circumstances, and subject to the limitations, contained in Article 306 of the Treaty, and any transfer in whole or in part or other dealing with any rights so acquired as aforesaid effected since the first day of August, nineteen hundred and fourteen, shall if and so far as it is inconsistent with any limitations conditions or restrictions so imposed be void and of no effect.

(xxi) So far as may be necessary for the purpose of Article 307 the Patents, Designs, and Trade Marks (Temporary Rules) Act, 1914 (except paragraph (b) of section one of the Patents, Designs, and Trade Marks (Temporary Rules) (Amendment) Act, 1914), shall in relation to German nationals continue in force after the Treaty comes into force as if references therein to subjects of a State at war with His Majesty included references to German nationals.

(xxii) The duly qualified tribunal for the purposes of Article 310 of the Treaty shall be the Comptroller-General of Patents, Designs and Trade Marks.

2. For the purposes of this Order—

* * * * *

The expression "nationals" in relation to any State includes the subjects or citizens of that State and any company or corporation incorporated therein according to the law of that State and in the case of a Protectorate the natives thereof:

The expression "Custodian" means the Custodian of enemy property appointed under the Trading with the Enemy (Amendment) Act, 1914.

The Interpretation Act, 1889, applies for the interpretation of this Order in like manner as it applies for the interpretation of an Act of Parliament, and as if this Order were an Act of Parliament.

3. This Order shall apply to the whole of His Majesty's Dominions and Protectorates, except India and the self-governing Dominions, that is to say the Dominion of Canada, the Commonwealth of Australia (which for this purpose shall be deemed to include Papua and Norfolk Island), the Union of South Africa, the Dominion of New Zealand, Newfoundland and India, but in its application to the parts

of His Majesty's Dominions outside the United Kingdom and to British Protectorates shall be subject to such modifications as may be made by the legislatures of those parts or those Protectorates for adapting to the circumstances thereof the provisions of this Order.

Provided that such of the provisions of this Order as give effect to Section III. of Part X. of the Treaty (*a*) shall not apply to Egypt.

4. This Order shall come into operation on the date when the Treaty of Peace comes into force (*b*), but so much of this Order as relates to Section III. of Part X. of the Treaty (*a*) and the annex to that section shall cease to be in operation after the expiration of one month from the deposit of the ratifications of the Treaty by His Majesty, unless in the meantime the notification referred to in paragraph (e) of Article 296 has been given to Germany by His Majesty.

5. This Order may be cited as the Treaty of Peace Order, 1919.

SCHEDULE.—SECTIONS OF THE TREATY OF VERSAILLES.

Section III.—Debts (*not material to this subject*).

Section IV.—Property, Rights and Interests.

Article 297.

The question of private property, rights and interests in an enemy country shall be settled according to the principles laid down in this Section and to the provisions of the Annex hereto:—

(a) The exceptional war measures and measures of transfer (defined in paragraph 3 of the Annex hereto) taken by Germany with respect to the property, rights and interests of nationals of Allied or Associated Powers including companies and associations in which they are interested, when liquidation has not been completed, shall be immediately discontinued or stayed and the property, rights, and interests concerned restored to their owners, who shall enjoy full rights therein in accordance with the provisions of Article 298.

(b) Subject to any contrary stipulations which may be provided for in the present Treaty, the Allied and Associated Powers reserve the right to retain and liquidate all property, rights, and interests belonging at the date of the coming into force of the present Treaty to German nationals, or companies controlled by them, within their territories, colonies, possessions and protectorates, including territories ceded to them by the present Treaty.

The liquidation shall be carried out in accordance with the laws of the Allied or Associated State concerned, and the German owner shall not be able to dispose of such property, rights, or interests nor to subject them to any charge without the consent of that State.

(*a*) Sect. III. relates to debts and is not material to this subject.
(*b*) As to the dates when the treaties of peace with different enemy countries came into force, see p. 187.

German nationals who acquire *ipso facto* the nationality of an Allied or Associated Power in accordance with the provisions of the present Treaty will not be considered as German nationals within the meaning of this paragraph.

(c) The price or the amount of compensation in respect of the exercise of the right referred to in the preceding paragraph (b) will be fixed in accordance with the methods of sale or valuation adopted by the laws of the country in which the property has been retained or liquidated.

(d) As between the Allied and Associated Powers or their nationals on the one hand and Germany or her nationals on the other hand, all the exceptional war measures, or measures of transfer, or acts done or to be done in execution of such measures as defined in paragraphs 1 and 3 of the Annex hereto shall be considered as final and binding upon all persons except as regards the reservations laid down in the present Treaty.

(e) The nationals of Allied and Associated Powers shall be entitled to compensation in respect of damage or injury inflicted upon their property, rights, or interests, including any company or association in which they are interested, in German territory as it existed on August 1st, 1914, by the application either of the exceptional war measures, or measures of transfer, mentioned in paragraphs 1 and 3 of the Annex hereto. The claims made in this respect by such nationals shall be investigated, and the total of the compensation shall be determined by the Mixed Arbitral Tribunal provided for in Section VI. or by an arbitrator appointed by that Tribunal. This compensation shall be borne by Germany, and may be charged upon the property of German nationals within the territory or under the control of the claimant's State. This property may be constituted as a pledge for enemy liabilities under the conditions fixed by paragraph 4 of the Annex hereto. The payment of this compensation may be made by the Allied or Associated State, and the amount will be debited to Germany.

(f) Whenever a national of an Allied or Associated Power is entitled to property which has been subjected to a measure of transfer in German territory and expresses a desire for its restitution, his claim for compensation in accordance with paragraph (e) shall be satisfied by the restitution of the said property if it still exists in specie.

In such case Germany shall take all necessary steps to restore the evicted owner to the possession of his property, free from all encumbrances or burdens with which it may have been charged after the liquidation, and to indemnify all third parties injured by the restitution.

If the restitution provided for in this paragraph cannot be effected, private agreements arranged by the intermediation of the Powers concerned or the Clearing Offices provided for in the Annex to Section III. may be made, in order to secure that the national of the Allied or Associated

Power may secure compensation for the injury referred to in paragraph (e) by the grant of advantages or equivalents which he agrees to accept in place of the property, rights, or interests of which he was deprived.

Through restitution in accordance with this Article, the price or the amount of compensation fixed by the application of paragraph (e) will be reduced by the actual value of the property restored, account being taken of compensation in respect of loss of use or deterioration.

(g) The rights conferred by paragraph (f) are reserved to owners who are nationals of Allied or Associated Powers within whose territory legislative measures prescribing the general liquidation of enemy property, rights, or interests were not applied before the signature of the Armistice.

(h) Except in cases where, by application of paragraph (f), restitutions in specie have been made, the net proceeds of sales of enemy property, rights or interests, wherever situated, carried out, either by virtue of war legislation, or by application of this Article, and in general all cash assets of enemies shall be dealt with as follows:—

(1) As regards Powers adopting Section III. and the Annex thereto, the said proceeds and cash assets shall be credited to the Power of which the owner is a national, through the Clearing Office established thereunder; any credit balance in favour of Germany resulting therefrom shall be dealt with as provided in Article 243.

(2) As regards Powers not adopting Section III. and the Annex thereto, the proceeds of the property, rights and interests, and the cash assets, of the nationals of Allied or Associated Powers held by Germany shall be paid immediately to the person entitled thereto or to his Government; the proceeds of the property, rights and interests, and the cash assets, of German nationals received by an Allied or Associated Power shall be subject to disposal by such Power in accordance with its laws and regulations and may be applied in payment of the claims and debts defined by this Article or paragraph 4 of the Annex hereto. Any property, rights and interests or proceeds thereof or cash assets not used as above provided may be retained by the said Allied or Associated Power and if retained the cash value thereof shall be dealt with as provided in Article 243.

In the case of liquidations effected in new States, which are signatories of the present Treaty as Allied and Associated Powers, or in States which are not entitled to share in the reparation payments to be made by Germany, the proceeds of liquidations effected by such States shall, subject to the rights of the Reparation Commission under the present Treaty, particularly under Articles 235 and 260, be paid direct to the owner. If on the application of that owner, the Mixed Arbitral Tribunal, provided for by Section VI. of this part or an arbitrator appointed by that Tribunal, is satisfied that the conditions of the sale or

measures taken by the Government of the State in question outside its general legislation were unfairly prejudicial to the price obtained, they shall have discretion to award to the owner equitable compensation to be paid by that State.

(i) Germany undertakes to compensate its nationals in respect of the sale or retention of their property, rights or interests in Allied or Associated States.

(j) The amount of all taxes and imposts upon capital levied or to be levied by Germany on the property, rights, and interests of the nationals of the Allied or Associated Powers from November 11th, 1918, until three months from the coming into force of the present Treaty, or, in the case of property, rights or interests which have been subjected to exceptional measures of war until restitution in accordance with the present Treaty, shall be restored to the owners.

ARTICLE 298.

Germany undertakes, with regard to the property, rights, and interests, including companies and associations in which they were interested, restored to nationals of Allied and Associated Powers in accordance with the provisions of Article 297, paragraph (a) or (f):—

(a) to restore and maintain, except as expressly provided in the present Treaty, the property, rights and interests of the nationals of Allied or Associated Powers in the legal position obtaining in respect of the property, rights and interests of German nationals under the laws in force before the war;

(b) not to subject the property, rights or interests of the nationals of the Allied or Associated Powers to any measures in derogation of property rights, which are not applied equally to the property, rights and interests of German nationals, and to pay adequate compensation in the event of the application of these measures.

ANNEX.

1. In accordance with the provisions of Article 297, paragraph (d), the validity of vesting orders and of orders for the winding up of businesses or companies, and of any other orders, directions, decisions, or instructions of any Court or any department of the Government of any of the High Contracting Parties made or given, or purporting to be made or given, in pursuance of war legislation with regard to enemy property, rights, and interests is confirmed. The interests of all persons shall be regarded as having been effectively dealt with by any order, direction, decision or instruction, dealing with property in which they may be interested, whether or not such interests are specifically mentioned in the order, direction, decision or instruction. No question shall be raised as to the regularity of a transfer of any property, rights or interests dealt with in pursuance of any such order, direction, decision, or instruction. Every action taken with regard to any property, business, or company, whether as

regards its investigation, sequestration, compulsory administration, use, requisition, supervision, or winding up, the sale or management of property, rights, or interests, the collection or discharge of debts, the payment of costs, charges or expenses, or any other matter whatsoever, in pursuance of orders, directions, decisions, or instructions of any Court or of any department of the Government of any of the High Contracting Parties, made or given, or purporting to be made or given, in pursuance of war legislation with regard to enemy property, rights, or interests, is confirmed: Provided that the provisions of this paragraph shall not be held to prejudice the titles to property heretofore acquired in good faith and for value and in accordance with the laws of the country in which the property is situated by nationals of the Allied and Associated Powers.

The provisions of this paragraph do not apply to such of the above-mentioned measures as have been taken by the German authorities in invaded or occupied territory, nor to such of the above-mentioned measures as have been taken by Germany or the German authorities since November 11th, 1918, all of which shall be void.

2. No claim or action shall be made or brought against any Allied or Associated Power or against any person acting on behalf of or under the direction of any legal authority or department of the Government of such a power by Germany or by any German national wherever resident in respect of any act or omission with regard to his property, rights, or interests during the war or in preparation for the war. Similarly, no claim or action shall be made or brought against any person in respect of any act or omission under or in accordance with the exceptional war measures, laws or regulations of any Allied or Associated Power.

3. In Article 297 and this Annex the expression "exceptional war measures" includes measures of all kinds, legislative, administrative, judicial, or others, that have been taken or will be taken hereafter with regard to enemy property, and which have had or will have the effect of removing from the proprietors the power of disposition over their property, though without affecting the ownership, such as measures of supervision, of compulsory administration, and of sequestration: or measures which have had or will have as an object the seizure of, the use of, or the interference with enemy assets for whatsoever motive, under whatsoever form, or in whatsoever place. Acts in the execution of these measures include all detentions, instructions, orders, or decrees of Government departments or Courts applying these measures to enemy property, as well as acts performed by any person connected with the administration or the supervision of enemy property, such as the payment of debts, the collecting of credits, the payment of any costs, charges, or expenses, or the collecting of fees.

Measures of transfer are those which have affected or will affect the ownership of enemy property by transferring it in whole or in part to a person other than the enemy owner, and without his consent, such as measures directing sale, liquidation, or devolution of ownership in enemy property, or the cancelling of titles or securities.

4. All property, rights, and interests of German nationals within the territory of any Allied or Associated Power and the net proceeds

of their sale, liquidation or other dealing therewith may be charged by that Allied or Associated Power in the first place with payment of amounts due in respect of claims by the nationals of that Allied or Associated Power with regard to their property, rights, and interests, including companies and associations in which they are interested, in German territory, or debts owing to them by German nationals and with payment of claims growing out of acts committed by the German Government or by any German authorities since July 31, 1914, and before that Allied or Associated Power entered into the war. The amount of such claims may be assessed by an arbitrator appointed by Mr. Gustave Ador, if he is willing, or, if no such appointment is made by him, by an arbitrator appointed by the Mixed Arbitral Tribunal provided for in Section VI. They may be charged in the second place with payment of the amounts due in respect of claims by the nationals of such Allied or Associated Power with regard to their property, rights, and interests in the territory of other enemy Powers, in so far as those claims are otherwise unsatisfied.

5. Notwithstanding the provisions of Article 297, where immediately before the outbreak of war a company incorporated in an Allied or Associated State had rights in common with a company controlled by it and incorporated in Germany to the use of trade marks in third countries, or enjoyed the use in common with such company of unique means of reproduction of goods or articles for sale in third countries, the former company shall alone have the right to use these trade marks in third countries to the exclusion of the German company, and these unique means of reproduction shall be handed over to the former company, notwithstanding any action under German war legislation with regard to the latter company or its business, industrial property or shares. Nevertheless, the former company if requested, shall deliver to the latter company derivative copies permitting the continuation of reproduction of articles for use within German territory.

6. Up to the time when restitution is carried out in accordance with Article 297, Germany is responsible for the conservation of property, rights, and interests of the nationals of Allied or Associated Powers, including companies and associations in which they are interested, that have been subjected by her to exceptional war measures.

7. Within one year from the coming into force of the present Treaty, the Allied or Associated Powers will specify the property, rights, and interests over which they intend to exercise the right provided in Article 297, paragraph (f).

8. The restitution provided in Article 297 will be carried out by order of the German Government or of the authorities which have been substituted for it. Detailed accounts of the action of administrators shall be furnished to the interested persons by the German authorities upon request, which may be made at any time after the coming into force of the present Treaty.

9. Until completion of the liquidation provided for by Article 297, paragraph (b), the property, rights, and interests of German nationals will continue to be subject to exceptional war measures that have been or will be taken with regard to them.

10. Germany will, within six months from the coming into force of the present Treaty, deliver to each Allied or Associated Power all securities, certificates, deeds, or other documents of title held by its nationals and relating to property, rights, or interests situated in the territory of that Allied or Associated Power, including any shares, stock, debentures, debenture stock, or other obligations of any company incorporated in accordance with the laws of that Power.

Germany will at any time on demand of any Allied or Associated Power furnish such information as may be required with regard to the property, rights, and interests of German nationals within the territory of such Allied or Associated Power or with regard to any transaction concerning such property, rights, or interests effected since July 1st, 1914.

11. The expression "cash assets" includes all deposits or funds established before or after the declaration of war, as well as all assets coming from deposits, revenues, or profits collected by administrators, sequestrators or others from funds placed on deposit or otherwise, but does not include sums belonging to the Allied or Associated Powers or to their component States, Provinces, or Municipalities.

12. All investments wheresoever effected with the cash assets of nationals of the High Contracting Parties, including companies and associations in which such nationals were interested, by persons responsible for the administration of enemy properties or having control over such administration, or by order of such persons or of any authority whatsoever, shall be annulled. These cash assets shall be accounted for irrespective of any such investment.

13. Within one month from the coming into force of the present Treaty, or on demand at any time, Germany will deliver to the Allied and Associated Powers all accounts, vouchers, records, documents, and information of any kind which may be within German territory, and which concern the property, rights, and interests of the nationals of those Powers, including companies and associations in which they are interested, that have been subjected to an exceptional war measure, or to a measure of transfer either in German territory or in territory occupied by Germany or her allies.

The controllers, supervisors, managers, administrators, sequestrators, liquidators, and receivers shall be personally responsible under guarantee of the German Government for the immediate delivery in full of these accounts and documents and for their accuracy.

14. The provisions of Article 297 and this Annex relating to property, rights and interests in an enemy country, and the proceeds of the liquidation thereof, apply to debts, credits, and accounts, Section III. regulating only the method of payment.

In the settlement of matters provided for in Article 297 between Germany and the Allied or Associated States, their colonies or protectorates, or any one of the British Dominions or India, in respect of any of which a declaration shall not have been made that they adopt Section III., and between their respective nationals, the provisions of Section III. respecting the currency in which payment is to be made and the rate of exchange and of interest shall apply unless the Government of the Allied or Associated Power concerned shall

within six months of the coming into force of the present Treaty notify Germany that the said provisions are not to be applied.

15. The provisions of Article 297 and this Annex apply to industrial, literary and artistic property which has been or will be dealt with in the liquidation of property, rights, interests, companies or businesses under war legislation by the Allied or Associated Powers, or in accordance with the stipulations of Article 297, paragraph (b).

Section V.—Contracts, Prescriptions, Judgments.

Article 299.

(a) Any contract concluded between enemies shall be regarded as having been dissolved as from the time when any two of the parties became enemies, except in respect of any debt or other pecuniary obligation arising out of any act done or money paid thereunder, and subject to the exceptions and special rules with regard to particular contracts or classes of contracts contained herein or in the Annex hereto.

(b) Any contract of which the execution shall be required in the general interest, within six months from the date of the coming into force of the present Treaty, by the Allied or Associated Governments of which one of the parties is a national, shall be excepted from dissolution under this Article.

When the execution of the contract thus kept alive would, owing to the alteration of trade conditions cause one of the parties substantial prejudice the Mixed Arbitral Tribunal provided for by Section VI. shall be empowered to grant to the prejudiced party equitable compensation.

(c) Having regard to the provisions of the Constitution and law of the United States of America, of Brazil and of Japan, neither the present Article nor Article 300, nor the Annex hereto shall apply to contracts made between nationals of these States and German nationals; nor shall Article 305 apply to the United States of America or its nationals.

(d) The present Article and the Annex hereto shall not apply to contracts the parties to which became enemies by reason of one of them being an inhabitant of territory of which the sovereignty has been transferred, if such party shall acquire under the present Treaty the nationality of an Allied or Associated Power, nor shall they apply to contracts between nationals of the Allied and Associated Powers between whom trading has been prohibited by reason of one of the parties being in Allied or Associated territory in the occupation of the enemy.

(e) Nothing in the present Article or the Annex hereto shall be deemed to invalidate a transaction lawfully carried out in accordance with a contract between enemies if it has been carried out with the authority of one of the belligerent Powers.

Article 300.

(a) All periods of prescription, or limitation of right of action, whether they began to run before or after the outbreak of war, shall

be treated in the territory of the High Contracting Parties, so far as regards relations between enemies, as having been suspended for the duration of the war. They shall begin to run again at earliest three months after the coming into force of the present Treaty. This provision shall apply to the period prescribed for the presentation of interest or dividend coupons or for the presentation for repayment of securities drawn for repayment or repayable on any other ground.

(b) Where, on account of failure to perform any act or comply with any formality during the war, measures of execution have been taken in German territory to the prejudice of a national of an Allied or Associated Power, the claim of such national shall, if the matter does not fall within the competence of the Courts of an Allied or Associated Power, be heard by the Mixed Arbitral Tribunal provided for by Section VI.

(c) Upon the application of any interested person who is a national of an Allied or Associated Power the Mixed Arbitral Tribunal shall order the restoration of the rights which have been prejudiced by the measures of execution referred to in paragraph (b), wherever, having regard to the particular circumstances of the case, such restoration is equitable and possible.

If such restoration is inequitable or impossible the Mixed Arbitral Tribunal may grant compensation to the prejudiced party to be paid by the German Government.

(d) Where a contract between enemies has been dissolved by reason either of failure on the part of either party to carry out its provisions or of the exercise of a right stipulated in the contract itself the party prejudiced may apply to the Mixed Arbitral Tribunal for relief. The Tribunal will have the powers provided for in paragraph (c).

(e) The provisions of the preceding paragraphs of this Article shall apply to the nationals of Allied and Associated Powers who have been prejudiced by reason of measures referred to above taken by Germany in invaded or occupied territory, if they have not been otherwise compensated.

(f) Germany shall compensate any third party who may be prejudiced by any restitution or restoration ordered by the Mixed Arbitral Tribunal under the provisions of the preceding paragraphs of this Article.

(g) As regards negotiable instruments, the period of three months provided under paragraph (a) shall commence as from the date on which any exceptional regulations applied in the territories of the interested Power with regard to negotiable instruments shall have definitely ceased to have force.

ARTICLE 301.

Relates to negotiable instruments.

ARTICLE 302.

Judgments given by the Courts of an Allied or Associated Power in all cases which, under the present Treaty, they are competent to decide, shall be recognised in Germany as final, and shall be enforced without it being necessary to have them declared executory.

If a judgment in respect of any dispute which may have arisen has been given during the war by a German Court against a national of an Allied or Associated State in a case in which he was not able to make his defence, the Allied and Associated national who has suffered prejudice thereby shall be entitled to recover compensation, to be fixed by the Mixed Arbitral Tribunal provided for in Section VI.

At the instance of the National of the Allied or Associated Power the compensation above mentioned may, upon order to that effect of the Mixed Arbitral Tribunal, be effected where it is possible by replacing the parties in the situation which they occupied before the judgment was given by the German Court.

The above compensation may likewise be obtained before the Mixed Arbitral Tribunal by the nationals of Allied or Associated Powers who have suffered prejudice by judicial measures taken in invaded or occupied territories, if they have not been otherwise compensated.

ARTICLE 303.

For the purpose of Sections III., IV., V., and VII., the expression "during the war" means for each Allied or Associated Power the period between the commencement of the state of war between that Power and Germany and the coming into force of the present Treaty.

ANNEX.

I. GENERAL PROVISIONS.

1. Within the meaning of Articles 299, 300, and 301, the parties to a contract shall be regarded as enemies when trading between them shall have been prohibited by or otherwise became unlawful under laws, orders, or regulations to which one of those parties was subject. They shall be deemed to have become enemies from the date when such trading was prohibited or otherwise became unlawful.

2. The following classes of contracts are excepted from dissolution by Article 299 and, without prejudice to the rights contained in Article 297 (b) of Section IV., remain in force subject to the application of domestic laws, orders, or regulations made during the war by the Allied and Associated Powers and subject to the terms of the contracts:—

(a) Contracts having for their object the transfer of estates or of real or personal property where the property therein had passed or the object had been delivered before the parties became enemies;
(b) Leases and agreements for leases of land and houses;
(c) Contracts of mortgage, pledge, or lien;
(d) Concessions concerning mines, quarries, or deposits;
(e) Contracts between individuals or companies and States, provinces, municipalities, or other similar juridical persons charged with administrative functions and concessions granted by States, provinces, municipalities, or other similar juridical persons charged with administrative functions.

3. If the provisions of a contract are in part dissolved under Article 299, the remaining provisions of that contract shall, subject

to the same application of domestic laws as is provided for in paragraph 2, continue in force if they are severable, but where they are not severable the contract shall be deemed to have been dissolved in its entirety.

Sections 2 and 3 of this Annex relate to Stock Exchange and insurance contracts.

Section VI.—Mixed Arbitral Tribunal.

Article 304.

(a) Within three months from the date of the coming into force of the present Treaty, a Mixed Arbitral Tribunal shall be established between each of the Allied and Associated Powers on the one hand, and Germany on the other hand. Each such Tribunal shall consist of three members. Each of the Governments concerned shall appoint one of these members. The President shall be chosen by agreement between the two Governments concerned.

In case of failure to reach agreement, the President of the Tribunal and two other persons, either of whom may in case of need take his place, shall be chosen by the Council of the League of Nations, or, until this is set up, by M. Gustave Ador if he is willing. These persons shall be nationals of Powers that have remained neutral during the war.

If any Government does not proceed within a period of one month in case there is a vacancy to appoint a member of the Tribunal, such member shall be chosen by the other Government from the two persons mentioned above other than the President.

The decision of the majority of the members of the Tribunal shall be the decision of the Tribunal.

(b) The Mixed Arbitral Tribunals established pursuant to paragraph (a) shall decide all questions within their competence under Sections III., IV., V., and VII.

In addition, all questions, whatsoever their nature, relating to contracts concluded before the coming into force of the present Treaty between nationals of the Allied and Associated Powers and German nationals shall be decided by the Mixed Arbitral Tribunal, always excepting questions which, under the laws of the Allied, Associated or Neutral Powers, are within the jurisdiction of the National Courts of those Powers. Such questions shall be decided by the National Courts in question, to the exclusion of the Mixed Arbitral Tribunal. The party who is a national of an Allied or Associated Power may nevertheless bring the case before the Mixed Arbitral Tribunal if this is not prohibited by the laws of his country.

(c) If the number of cases justifies it, additional members shall be appointed and each Mixed Arbitral Tribunal shall sit in divisions. Each of these divisions will be constituted as above.

(d) Each Mixed Arbitral Tribunal will settle its own procedure except in so far as it is provided in the following Annex, and is empowered to award the sums to be paid by the loser in respect of the costs and expenses of the proceedings.

(e) Each Government will pay the remuneration of the member of

the Mixed Arbitral Tribunal appointed by it and of any agent whom it may appoint to represent it before the Tribunal. The remuneration of the President will be determined by special agreement between the Governments concerned; and this remuneration and the joint expenses of each Tribunal will be paid by the two Governments in equal moieties.

(f) The High Contracting Parties agree that their courts and authorities shall render to the Mixed Arbitral Tribunal direct all the assistance in their power, particularly as regards transmitting notices and collecting evidence.

(g) The High Contracting Parties agree to regard the decisions of the Mixed Arbitral Tribunal as final and conclusive, and to render them binding upon their nationals.

ANNEX.

1. Should one of the members of the Tribunal either die, retire, or be unable for any reason whatever to discharge his functions, the same procedure will be followed for filling the vacancy as was followed for appointing him.

2. The Tribunal may adopt such rules of procedure as shall be in accordance with justice and equity and decide the order and time at which each party must conclude its arguments, and may arrange all formalities required for dealing with the evidence.

3. The agent and counsel of the parties on each side are authorised to present orally and in writing to the Tribunal arguments in support or in defence of each case.

4. The Tribunal shall keep record of the questions and cases submitted and the proceedings thereon, with the dates of such proceedings.

5. Each of the Powers concerned may appoint a secretary. These secretaries shall act together as joint secretaries of the Tribunal and shall be subject to its direction. The Tribunal may appoint and employ any other necessary officer or officers to assist in the performance of its duties.

6. The Tribunal shall decide all questions and matters submitted upon such evidence and information as may be furnished by the parties concerned.

7. Germany agrees to give the Tribunal all facilities and information required by it for carrying out its investigations.

8. The language in which the proceedings shall be conducted shall, unless otherwise agreed, be English, French, Italian, or Japanese, as may be determined by the Allied or Associated Power concerned.

9. The place and time for the meetings of each Tribunal shall be determined by the President of the Tribunal.

ARTICLE 305.

Whenever a competent Court has given or gives a decision in a case covered by Sections III. IV., V., or VII., and such decision is inconsistent with the provisions of such sections, the party who is prejudiced by the decision shall be entitled to obtain redress which

shall be fixed by the Mixed Arbitral Tribunal. At the request of the national of an Allied or Associated Power, the redress may, whenever possible, be effected by the Mixed Arbitral Tribunal directing the replacement of the parties in the position occupied by them before the judgment was given by the German Court.

Section VII.—Industrial Property.

Article 306.

Subject to the stipulations of the present Treaty, rights of industrial, literary, and artistic property, as such property is defined by the International Conventions of Paris and of Berne, mentioned in Article 286, shall be re-established or restored, as from the coming into force of the present Treaty, in the territories of the High Contracting Parties, in favour of the persons entitled to the benefit of them at the moment when the state of war commenced or their legal representatives. Equally, rights which, except for the war, would have been acquired during the war in consequence of an application made for the protection of industrial property, or the publication of a literary or artistic work, shall be recognised and established in favour of those persons who would have been entitled thereto, from the coming into force of the present Treaty.

Nevertheless, all acts done by virtue of the special measures taken during the war under legislative, executive or administrative authority of any Allied or Associated Power in regard to the rights of German nationals in industrial, literary or artistic property shall remain in force and shall continue to maintain their full effect.

No claim shall be made or action brought by Germany or German nationals in respect of the use during the war by the Government of any Allied or Associated Power, or by any persons acting on behalf or with the assent of such Government, of any rights in industrial, literary or artistic property, nor in respect of the sale, offering for sale, or use of any products, articles or apparatus whatsoever to which such rights applied.

Unless the legislation of any one of the Allied or Associated Powers in force at the moment of the signature of the present Treaty otherwise directs, sums due or paid in virtue of any act or operation resulting from the execution of the special measures mentioned in paragraph 1 of this Article shall be dealt with in the same way as other sums due to German nationals are directed to be dealt with by the present Treaty; and sums produced by any special measures taken by the German Government in respect of rights in industrial, literary or artistic property belonging to the nationals of the Allied or Associated Powers shall be considered and treated in the same way as other debts due from German nationals.

Each of the Allied and Associated Powers reserves to itself the right to impose such limitations, conditions, or restrictions on rights of industrial, literary, or artistic property (with the exception of trade marks) acquired before or during the war, or which may be subsequently acquired in accordance with its legislation, by German nationals, whether by granting licences, or by the working, or by

preserving control over their exploitation, or in any other way, as may be considered necessary for national defence, or in the public interest, or for assuring the fair treatment by Germany of the rights of industrial, literary, and artistic property held in German territory by its nationals, or for securing the due fulfilment of all the obligations undertaken by Germany in the present Treaty. As regards rights of industrial, literary, and artistic property acquired after the coming into force of the present Treaty, the right so reserved by the Allied and Associated Powers shall only be exercised in cases where these limitations, conditions, or restrictions may be considered necessary for national defence or in the public interest.

In the event of the application of the provisions of the preceding paragraph by any Allied or Associated Power, there shall be paid reasonable indemnities or royalties which shall be dealt with in the same way as other sums due to German nationals are directed to be dealt with by the present Treaty.

Each of the Allied or Associated Powers reserves the right to treat as void and of no effect any transfer in whole or in part of or other dealing with rights of or in respect of industrial, literary, or artistic property effected after August 1, 1914, or in the future, which would have the result of defeating the objects of the provisions of this article.

The provisions of this article shall not apply to rights in industrial, literary, or artistic property which have been dealt with in the liquidation of businesses or companies under war legislation by the Allied or Associated Powers, or which may be so dealt with by virtue of Article 297, paragraph (b).

ARTICLE 307.

A minimum of one year after the coming into force of the present Treaty (*a*) shall be accorded to the nationals of the High Contracting Parties, without extension fees or other penalty, in order to enable such persons to accomplish any act, fulfil any formality, pay any fees, and generally satisfy any obligation prescribed by the laws or regulations of the respective States relating to the obtaining, preserving, or opposing rights to, or in respect of, industrial property either acquired before August 1, 1914, or which, except for the war, might have been acquired since that date as a result of an application made before the war or during its continuance, but nothing in this article shall give any right to re-open interference proceedings in the United States of America where a final hearing has taken place.

All rights in, or in respect of, such property, which may have lapsed by reason of any failure to accomplish any act, fulfil any formality, or make any payment, shall revive, but subject in the case of patents and designs to the imposition of such conditions as each Allied or Associated Power may deem reasonably necessary for the protection of persons who have manufactured or made use of the subject-matter of such property while the rights had lapsed. Further,

(*a*) As to dates when the treaties of peace with different enemy countries came into force, see p. 187.

where rights to patents or designs belonging to German nationals are revived under this article, they shall be subject in respect of the grant of licences to the same provisions as would have been applicable to them during the war, as well as to all the provisions of the present Treaty.

The period from August 1, 1914, until the coming into force of the present Treaty shall be excluded in considering the time within which a patent should be worked or a trade mark or design used, and it is further agreed that no patent, registered trade mark, or design in force on August 1, 1914, shall be subject to revocation or cancellation by reason only of the failure to work such patent or use such trade mark or design for two years after the coming into force of the present Treaty.

ARTICLE 308.

The rights of priority, provided by Article IV. of the International Convention for the Protection of Industrial Property of Paris, of March 20, 1883, revised at Washington in 1911, or by any other Convention or Statute, for the filing or registration of applications for patents or models of utility, and for the registration of trade marks, designs, and models which had not expired on August 1, 1914, and those which have arisen during the war, or would have arisen but for the war, shall be extended by each of the High Contracting Parties in favour of all nationals of the other High Contracting Parties for a period of six months after the coming into force of the present Treaty.

Nevertheless, such extension shall in no way affect the right of any of the High Contracting Parties or of any person who before the coming into force of the present Treaty was *bonâ fide* in possession of any rights of industrial property conflicting with rights applied for by another who claims rights of priority in respect of them, to exercise such rights by itself or himself personally, or by such agents or licensees as derived their rights from it or him before the coming into force of the present Treaty; and such persons shall not be amenable to any action or other process of law in respect of infringement.

ARTICLE 309.

No action shall be brought and no claim made by persons residing or carrying on business within the territories of Germany on the one part and of the Allied or Associated Powers on the other, or persons who are nationals of such Powers respectively, or by any one deriving title during the war from such persons, by reason of any action which has taken place within the territory of the other party between the date of the declaration of war and that of the coming into force of the present Treaty, which might constitute an infringement of the rights of industrial property or rights of literary and artistic property, either existing at any time during the war or revived under the provisions of Articles 307 and 308.

Equally, no action for infringement of industrial, literary, or artistic property rights by such persons shall at any time be permissible in respect of the sale or offering for sale for a period of one

year after the signature of the present Treaty in the territories of the Allied or Associated Powers on the one hand or Germany on the other, of products or articles manufactured, or of literary or artistic works published during the period between the declaration of war and the signature of the present Treaty, or against those who have acquired and continue to use them. It is understood, nevertheless, that this provision shall not apply when the possessor of the rights was domiciled or had an industrial or commercial establishment in the districts occupied by Germany during the war.

This Article shall not apply as between the United States of America on the one hand and Germany on the other.

ARTICLE 310.

Licences in respect of industrial, literary, or artistic property concluded before the war between nationals of the Allied or Associated Powers or persons residing in their territory or carrying on business therein, on the one part, and German nationals, on the other part, shall be considered as cancelled as from the date of the declaration of war between Germany and the Allied or Associated Power. But, in any case, the former beneficiary of a contract of this kind shall have the right, within a period of six months after the coming into force of the present Treaty, to demand from the proprietor of the rights the grant of a new licence, the conditions of which, in default of agreement between the parties, shall be fixed by the duly qualified tribunal in the country under whose legislation the rights have been acquired, except in the case of licences held in respect of rights acquired under German law. In such cases the conditions shall be fixed by the Mixed Arbitral Tribunal referred to in Section VI. of this Part. The tribunal may, if necessary, fix also the amount which it may deem just should be paid by reason of the use of the rights during the war.

No licence in respect of industrial, literary, or artistic property, granted under the special war legislation of any Allied or Associated Power, shall be affected by the continued existence of any licence entered into before the war, but shall remain valid and of full effect, and a licence so granted to the former beneficiary of a licence entered into before the war shall be considered as substituted for such licence.

Where sums have been paid during the war by virtue of a licence or agreement concluded before the war in respect of rights of industrial property or for the reproduction or the representation of literary, dramatic, or artistic works, these sums shall be dealt with in the same manner as other debts or credits of German nationals, as provided by the present Treaty.

This Article shall not apply as between the United States of America on the one hand and Germany on the other.

ARTICLE 311.

The inhabitants of territories separated from Germany by virtue of the present Treaty shall, notwithstanding this separation and the change of nationality consequent thereon, continue to enjoy in Ger-

many all the rights in industrial, literary, and artistic property to which they were entitled under German legislation at the time of the separation.

Rights of industrial, literary, and artistic property which are in force in the territories separated from Germany under the present Treaty at the moment of the separation of these territories from Germany or which will be re-established or restored in accordance with the provisions of Article 306 of the present Treaty, shall be recognised by the State to which the said territory is transferred and shall remain in force in that territory for the same period of time given them under the German law.

APPENDIX G.

THE PATENTS, DESIGNS, AND TRADE MARKS ACTS, 1883—1902 (SO FAR AS RELATES TO TRADE MARKS), CONSOLIDATED.

(*The greater part of these provisions were repealed entirely or repealed so far as they relate to trade marks by the Act of* 1905: *see sects.* 73, 74, *and Schedule. The remaining provisions were repealed by sect.* 98 *and Second Schedule to the Patents and Designs Act*, 1907.)

THE PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883 (*a*).

46 & 47 Vict. c. 57.

An Act to amend and consolidate the Law relating to Patents for Inventions, Registration of Designs, and of Trade Marks.

[25th August, 1883.]

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

(*a*) The amending Acts are as follows:—
The Patents, Designs, and Trade Marks (Amendment) Act, 1885 (48 & 49 Vict. c. 63).
The Patents Act, 1886 (49 & 50 Vict. c. 37).
The Patents, Designs, and Trade Marks Act, 1888 (51 & 52 Vict. c. 50).
The Patents Act, 1901 (1 Edw. VII. c. 18).
The Patents Act, 1902 (2 Edw. VII. c. 34).
Of such Acts those passed in 1886 and 1901 do not affect trade marks at all, and those of 1885 and 1902 only do so in one or two small details.
The parts of the principal Act which have been expunged by the later Acts are printed in italics, and the provisions which have been introduced are printed in brackets.

PART I.

Part I.

Preliminary.

PRELIMINARY.

Short title.

1. This Act may be cited as the Patents, Designs, and Trade Marks Act, 1883.

Division of Act into parts.

2. This Act is divided into parts, as follows:—

Part I.—Preliminary.
Part II.—Patents.
Part III.—Designs.
Part IV.—Trade Marks.
Part V.—General.

Commencement of Act.

3. This Act, except where it is otherwise expressed, shall commence from and immediately after the thirty-first day of December, one thousand eight hundred and eighty-three (*a*).

(*a*) The Act of 1888, except where otherwise provided, commenced on the 1st January, 1889 (sect. 28).

PART II. (Sects. 4—46.)

Patents.

PART III. (Sects. 47—61.)

Designs.

PART IV.

Trade Marks.

Registration of Trade Marks.

Application for registration.

See T. M. A. 1905, ss. 12, 59.

62.—(1.) The comptroller may, on application by or on behalf of any person claiming to be the proprietor of a trade mark, register the trade mark.

(2.) The application must be made in the form set forth in the first schedule to this Act, or in such other form as may be from time to time prescribed, and must be left at, or sent by post to *the Patent Office in the prescribed manner* [such place and in such manner as may be prescribed].

(3.) The application must be accompanied by the prescribed number of representations of the trade mark, and must state the particular goods or classes of goods in connection with which the applicant desires the trade mark to be registered.

(4.) The comptroller may, if he thinks fit, refuse to register a trade mark; but any such refusal shall be subject to appeal to the Board of Trade, who shall, if required, hear the applicant and the comptroller, and may make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(5.) The Board of Trade may, however, if it appears expedient, refer the appeal to the Court; and in that event the Court shall have jurisdiction to hear and determine the appeal, and may make such order as aforesaid.

[(6.) Where an applicant for the registration of a trade mark otherwise than under an International Convention is out of the United Kingdom at the time of making the application, he shall give the comptroller an address for service in the United Kingdom, and if he

fails to do so the application shall not be proceeded with until the address has been given.]

The amendments in this section were made by sect. 8 of the Act of 1888.

63. Where registration of a trade mark has not been or shall not be completed within twelve months from the date of the application, by reason of default on the part of the applicant, *the application shall be deemed to be abandoned* (*a*) [the comptroller shall give notice of the non-completion to the agent employed on behalf of the applicant, and if at the expiration of fourteen days from that notice the registration is not completed, shall give the like notice to the applicant, and if at the expiration of the latter fourteen days, or such further time as the comptroller may in special cases permit, the registration is not completed, the application shall be deemed to be abandoned].

Limit of time for proceeding with application. **See T. M. A. 1905, s. 18.**

(*a*) This provision was first made by the edition of March, 1883, of the Rules under the old Acts. The amendments in this section were made by sect. 9 of the Act of 1888.

64.—(1.) *For the purposes of this Act, a trade mark must consist of or contain at least one of the following essential particulars:*

(a.) *A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner; or*

(b.) *A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or*

(c.) *A distinctive device, mark, brand, heading, label, ticket, or fancy word or words not in common use.*

(2.) *There may be added to any one or more of these particulars any letters, words or figures, or combination of letters, words or figures, or of any of them.*

(3.) *Provided that any special and distinctive word or words, letter, figure, or combination of letters or figures or of letters and figures used as a trade mark before the thirteenth day of August, one thousand eight hundred and seventy-five, may be registered as a trade mark under this part of this Act.*

Conditions of registration of trade mark. **See T. M. A. 1905, ss. 9, 15.**

[**64.**—(1.) For the purposes of this Act, a trade mark must consist of or contain at least one of the following essential particulars:

(a.) A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner; or

(b.) A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or

(c.) A distinctive device, mark, brand, heading, label, or ticket; or

(d.) An invented word or invented words; or

(e.) A word or words having no reference to the character or quality of the goods, and not being a geographical name.

(2.) There may be added to any one or more of the essential particulars mentioned in this section any letters, words, or figures, or combination of letters, words, or figures, or of any of them: but the

applicant for registration of any such additional matter must state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register.

(3.) Provided as follows:

(i.) A person need not under this section disclaim his own name or the foreign equivalent thereof, or his place of business; but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof;

(ii.) Any special and distinctive word or words, letter, figure, or combination of letters or figures, or of letters and figures, used as a trade mark before the thirteenth day of August, one thousand eight hundred and seventy-five, may be registered as a trade mark under this part of this Act.]

This section is enlarged from sect. 10 of the Act of 1875. The amendments in this section were made by sect. 10 of the Act of 1888.

Connection of trade mark with goods.

See T. M. A. 1905, s. 8.

65. A trade mark must be registered for particular goods or classes of goods.

This came from sect. 2 of the Trade Marks Registration Act, 1875.

Registration of a series of marks.

See T. M. A. 1905, s. 26.

66. When a person claiming to be the proprietor of several trade marks which, while resembling each other in the material particulars thereof, yet differ in respect of (a) the statement of the goods for which they are respectively used or proposed to be used, or (b) statements of numbers, or (c) statements of price, or (d) statements of quality, or (e) statements of names of places, seeks to register such trade marks, they may be registered as a series in one registration. A series of trade marks shall be assignable and transmissible only as a whole, but for all other purposes each of the trade marks composing a series shall be deemed and treated as registered separately.

This section was entirely new.

Trade marks may be registered in any colour.

See T. M. A. 1905, s. 10.

67. A trade mark may be registered in any colour [or colours], and such registration shall (subject to the provisions of this Act) confer on the registered owner the exclusive right to use the same in that or any other colour [or colours].

The amendments in this section were made by sect. 11 of the Act of 1888.

Advertisement of application.

See T. M. A. 1905, s. 13.

68. Every application for registration of a trade mark under this part of this Act shall as soon as may be after its receipt be advertised by the comptroller, [unless the comptroller refuse to entertain the application].

The amendments in this section were made by sect. 12 of the Act of 1888.

Opposition to registration. See T. M. A. 1905, ss. 14, 59.

69.—(1.) Any person may within *two months* [one month or such further time, not exceeding three months, as the comptroller may allow] of the *first* advertisement of the application, give notice in duplicate at the Patent Office of opposition to registration of the trade mark, and the comptroller shall send one copy of such notice to the applicant.

(2.) Within *two months* [one month] after receipt of such notice or such further time as the comptroller may allow, the applicant may send to the comptroller a counter-statement in duplicate of the grounds on which he relies for his application, and if he does not do so, shall be deemed to have abandoned his application.

(3.) *If the applicant sends such counter-statement, the comptroller shall furnish a copy thereof to the person who gave notice of opposition, and shall require him to give security in such manner and to such amount as the comptroller may require for such costs as may be awarded in respect of such opposition; and if such security is not given within fourteen days after such requirement was made or such further time as the comptroller may allow, the opposition shall be deemed to be withdrawn.*

(4.) *If the person who gave notice of opposition duly gives such security as aforesaid, the comptroller shall inform the applicant thereof in writing, and thereupon the case shall be deemed to stand for the determination of the Court.*

[(3.) If the applicant sends such counter-statement, the comptroller shall furnish a copy thereof to the person who gave notice of opposition, and shall, after hearing the applicant and the opponent, if so required, decide whether the trade mark is to be registered; but his decision shall be subject to appeal to the Board of Trade, who shall, if required, hear the applicant and the opponent and the comptroller, and may make an order determining whether, and subject to what conditions (if any), registration is to be permitted.

(4.) The Board of Trade may, however, if it appears expedient, refer the appeal to the Court, and in that event the Court shall have jurisdiction to hear and determine the appeal, and may make such order as aforesaid.

(5.) If the applicant abandons his application after notice of opposition in pursuance of this section, he shall be liable to pay to the opponent such costs in respect of the opposition as the comptroller may determine to be reasonable.

(6.) Where the opponent is out of the United Kingdom he shall give the comptroller an address for service in the United Kingdom.]

This section came from the old rules. The amendments were made by sect. 13 of the Act of 1888.

Assignment and transmission of trade mark. See T. M. A. 1905, s. 22.

70. A trade mark, when registered, shall be assigned and transmitted only in connection with the goodwill of the business concerned in the particular goods or classes of goods for which it has been registered, and shall be determinable with that goodwill.

This section came from sect. 2 of the Act of 1875.

Conflicting claims to registration.
See T. M. A. 1905, s. 20.

71. Where each of several persons claims to be registered as proprietor of the same trade mark, the comptroller may refuse to register any of them until their rights have been determined according to law, and the comptroller may himself submit or require the claimants to submit their rights to the Court.

This section came from sect. 5 of the Act of 1875.

Restrictions on registration.
See T. M. A. 1905, s. 19.

72.—(1.) Except where the Court has decided that two or more persons are entitled to be registered as proprietors of the same trade mark, the comptroller shall not register in respect of the same goods or description of goods a trade mark identical with one already on the register with respect to such goods or description of goods.

(2.) [Except as aforesaid] the comptroller shall not register with respect to the same goods or description of goods a trade mark *so nearly resembling* [having such resemblance to] a trade mark already on the register with respect to such goods or description of goods as to be calculated to deceive.

This section came from sect. 6 of the Act of 1875. The amendments in this section were made by sect. 14 of the Act of 1888.

Further restriction on registration.
See T. M. A. 1905, s. 11.

73. It shall not be lawful to register as part of or in combination with a trade mark any words the *exclusive* use of which would, by reason of their being calculated to deceive or otherwise, be deemed disentitled to protection in a Court of Justice, or any scandalous design.

This section was taken from sect. 6 of the Act of 1875, and was amended by sect. 15 of the Act of 1888.

Saving for power to provide for entry on register of common marks as additions to trade marks.
See T. M. A. 1905, s. 15.

74.—(1.) Nothing in this Act shall be construed to prevent the comptroller entering on the register, in the prescribed manner, and subject to the prescribed conditions, as an addition to any trade mark—

(a.) In the case of an application for registration of a trade mark used before the thirteenth day of August one thousand eight hundred and seventy-five—

Any distinctive device, mark, brand, heading, label, ticket, letter, word, or figure, or combination of letters, words, or figures, though the same is common to the trade in the goods with respect to which the application is made;

(b.) In the case of an application for registration of a trade mark not used before the thirteenth day of August one thousand eight hundred and seventy-five—

Any distinctive word or combination of words, though the same is common to the trade in the goods with respect to which the application is made;

(2.) *The applicant for entry of any such common particular or particulars must, however, disclaim in his application any right to*

the exclusive use of the same, and a copy of the disclaimer shall be entered on the register.

[(2.) The applicant for registration of any such addition must, however, state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register.

Provided that a person need not, under this section, disclaim his own name or the foreign equivalent thereof, or his place of business; but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof.]

(3.) Any device, mark, brand, heading, label, ticket, letter, word, figure, or combination of letters, words or figures, which was, or were, before the thirteenth day of August, one thousand eight hundred and seventy-five, publicly used by more than three persons on the same or a similar description of goods shall, for the purposes of this section, be deemed common to the trade in such goods.

The amendments in this section were made by sect. 16 of the Act of 1888.

Effect of Registration.

Registration equivalent to public use.

See T. M. A. 1905, s. 16.

75. *Registration of a trade mark shall be deemed to be equivalent to public use of the trade mark.*] [Application for registration of a trade mark shall be deemed to be equivalent to public use of the trade mark, and the date of the application shall for the purposes of this Act be deemed to be, and as from the first day of January one thousand eight hundred and seventy-six to have been, the date of the registration.]

The original sect. 75, for which this section was substituted by sect. 17 of the Act of 1888, came from sect. 2 of the Act of 1875.

The last part of this section, as altered, came from Rule 32 of the Rules of 1883, and originally from the old rules.

Right of first proprietor to exclusive use of trade mark.

See T. M. A. 1905, ss. 39, 40.

76. The registration of a person as proprietor of a trade mark shall be *primâ facie* evidence of his right to the exclusive use of the trade mark, and shall, after the expiration of five years from the date of the registration, be conclusive evidence of his right to the exclusive use of the trade mark, subject to the provisions of this Act.

This section came from sect. 3 of the Act of 1875.

Restrictions on actions for infringement, and on defence to action in certain cases.

See T. M. A. 1905, s. 42.

77. A person shall not be entitled to institute any proceeding to prevent or to recover damages for the infringement of a trade mark unless, in the case of a trade mark capable of being registered under this Act, it has been registered in pursuance of this Act, or of an enactment repealed by this Act, or, in the case of any other trade mark in use before the thirteenth of August one thousand eight hundred and seventy-five, registration thereof under this part of this Act, or of any enactment repealed by this Act, has been refused. The comptroller may, on request, and on payment of the prescribed fee, grant a certificate that such registration has been refused.

This section came from sect. 1 of the Act of 1876.

Certificate as to exclusive use and costs thereon.
See T. M. A. 1905, s. 46.

77A. In an action for infringement of a registered trade mark the Court or a judge may certify that the right to the exclusive use of the trade mark came in question: and if the Court or a judge so certifies, then in any subsequent action for infringement the plaintiff in that action, on obtaining a final order or judgment in his favour, shall have his full costs, charges, and expenses as between solicitor and client, unless the Court or judge trying the subsequent action certifies that he ought not to have the same.]

This section was introduced by sect. 18 of the Act of 1888.

Register of Trade Marks.

Register of trade marks.
See T. M. A. 1905, s. 4.

78. There shall be kept at the Patent Office a book called the Register of Trade Marks, wherein shall be entered the names and addresses of proprietors of registered trade marks, notifications of assignments and of transmissions of trade marks, and such other matters as may be from time to time prescribed.

Removal of trade mark after fourteen years unless fee paid.
See T. M. A. 1905, ss. 28—31.

79.—(1.) At a time not being less than two months nor more than three months before the expiration of fourteen years from the date of the registration of a trade mark, the comptroller shall send notice to the registered proprietor that the trade mark will be removed from the register unless the proprietor pays to the comptroller before the expiration of such fourteen years (naming the date at which the same will expire) the prescribed fee; and if such fee be not previously paid, he shall at the expiration of one month from the date of the giving of the first notice send a second notice to the same effect.

(2.) If such fee be not paid before the expiration of such fourteen years the comptroller may after the end of three months from the expiration of such fourteen years remove the mark from the register, and so from time to time at the expiration of every period of fourteen years.

(3.) If before the expiration of the said three months the registered proprietor pays the said fee together with the additional prescribed fee, the comptroller may, without removing such trade mark from the register, accept the said fee as if it had been paid before the expiration of the said fourteen years.

(4.) Where after the said three months a trade mark has been removed from the register for non-payment of the prescribed fee, the comptroller may, if satisfied that it is just so to do, restore such trade mark to the register on payment of the prescribed additional fee.

(5.) Where a trade mark has been removed from the register for non-payment of the fee or otherwise, such trade mark shall nevertheless, for the purpose of any application for registration during *the five years* [one year] next after the date of such removal, be deemed to be a trade mark which is already registered [unless it is shown to the satisfaction of the comptroller that the non-payment of the fee arises from the death or bankruptcy of the registered proprietor, or from his having ceased to carry on business, and that no person claiming under that proprietor or under his bankruptcy is using the trade mark].

This section came from the old rules. The amendments were made by sect. 19 of the Act of 1888.

Fees.

80. There shall be paid in respect of applications and registration and other matters under this part of this Act, such fees as may be from time to time, with the sanction of the Treasury, prescribed by the Board of Trade; and such fees shall be levied and paid to the account of her Majesty's Exchequer in such manner as the Treasury may from time to time direct.

Fees for registration, &c. See T. M. A. 1905, s. 61.

Sheffield Marks.

81. With respect to the Master, wardens, searchers, assistants, and commonalty of the Company of Cutlers in Hallamshire, in the county of York (in this Act called the Cutlers' Company), and the marks or devices (in this Act called Sheffield marks) assigned or registered by the Master, wardens, searchers, and assistants of that Company, the following provisions shall have effect:—

Registration by Cutlers' Company of Sheffield marks. See T. M. A. 1905, s. 63.

(1.) The Cutlers' Company shall establish and keep at Sheffield a new register of trade marks (in this Act called the Sheffield register):

(2.) *The Cutlers' Company shall enter in the Sheffield register, in respect of cutlery, edge tools, or raw steel, and the goods mentioned in the next sub-section, all the trade marks entered before the commencement of this Act in respect of cutlery, edge tools, or raw steel and such goods in the register established under the Trade Marks Registration Act,* 1875, *belonging to persons carrying on business in Hallamshire, or within six miles thereof, and shall also enter in such register, in respect of the same goods, all the trade marks which shall have been assigned by the Cutlers' Company and actually used before the commencement of this Act, but which have not been entered in the register established under the Trade Marks Registration Act,* 1875.

(2.) The Cutlers' Company shall enter in the Sheffield register, in respect of metal goods as defined in this section, all the trade marks entered before the first day of January one thousand eight hundred and eighty-nine, in respect of metal goods, either in the register established under the Trade Marks Registration Act, 1875, or in the register of trade marks under this Act, belonging to persons carrying on business in Hallamshire or within six miles thereof. The Cutlers' Company shall also, on request made in the prescribed manner, enter in the Sheffield register, in respect of metal goods, all the trade marks which shall have been assigned by the Cutlers' Company and actually used before the first day of January one thousand eight hundred and eighty-four, but which have not been entered in either of the said registers.]

(3.) An application for registration of a trade mark used *on cutlery, edge tools, or on raw steel, or on goods made of steel, or of steel and iron combined, whether with or without a cutting edge,* [on metal goods] shall, if made after the commencement of this Act by a person carrying on business in Hallamshire, or within six miles thereof, be made to the Cutlers' Company.

(4.) Every application so made to the Cutlers' Company shall be notified to the comptroller in the prescribed manner, and unless the comptroller within the prescribed time gives notice to the Cutlers' Company that he objects to the acceptance of the application, it shall be proceeded with by the Cutlers' Company in the prescribed manner:

(5.) If the comptroller gives notice of objection as aforesaid, the application shall not be proceeded with by the Cutlers' Company, but any person aggrieved may appeal to the Court:

(6.) Upon the registration of a trade mark in the Sheffield register the Cutlers' Company shall give notice thereof to the comptroller, who shall thereupon enter the mark in the register of trade marks; and such registration shall bear date as of the day of application to the Cutlers' Company, and have the same effect as if the application had been made to the comptroller on that day:

(7.) *The provisions of this Act, and of any general rules made under this Act, with respect to application for registration in the register of trade marks, the effect of such registration, and the assignment and transmission of rights in a registered trade mark, shall apply in the case of applications and registration in the Sheffield register; and notice of every entry made in the Sheffield register must be given to the comptroller by the Cutlers' Company, save and except that the provisions of this sub-section shall not prejudice or affect any life estate and interest of a widow of the holder of any Sheffield mark which may be in force in respect of such mark at the time when it shall be placed upon the Sheffield register:*

[(7.) The provisions of this Act, and of any general rules made under this Act, with respect to the registration of trade marks, and all matters relating thereto, shall, subject to the provisions of this section, apply to the registration of trade marks on metal goods by the Cutlers' Company, and to all matters relating thereto; and this Act, and any such general rules shall, so far as applicable, be construed accordingly, with the substitution of the Cutlers' Company, the office of the Cutlers' Company, and the Sheffield register, for the comptroller, the Patent Office, and the register of trade marks respectively; and notice of every entry, cancellation, or correction made in the Sheffield register shall be given to the comptroller by the Cutlers' Company: provided that this section shall not affect any life estate and interest of a widow of the holder of any Sheffield mark which may be in force in respect of such mark at the time when it shall be placed upon the Sheffield register.]

(8.) Where the comptroller receives from any person not carrying on business in Hallamshire or within six miles thereof an application for registration of a trade mark used on *cutlery, edge tools, or on raw steel, or on goods made of steel, or of steel and iron combined, whether with or without cutting edge,* [on metal goods] he shall in the prescribed manner notify the application and proceedings thereon to the Cutlers' Company:

(9.) At the expiration of five years from the commencement of this Act the Cutlers' Company shall close the Cutlers' register of corporate trade marks, and thereupon all marks entered therein shall, unless entered in the Sheffield register, be deemed to have been abandoned:

(10.) A person may (notwithstanding anything in any Act relating to the Cutlers' Company) be registered in the Sheffield register as proprietor of two or more trade marks:

(11.) A body of persons, corporate or not corporate, may (notwithstanding anything in any Act relating to the Cutlers' Company) be registered in the Sheffield register as proprietor of a trade mark or trade marks:

(12.) Any person aggrieved by a decision of the Cutlers' Company in respect of anything done or omitted under this Act may, in the prescribed manner appeal to the comptroller, who shall have power to confirm, reverse, or modify the decision, but the decision of the comptroller shall be subject to a further appeal to the Court:

(13.) So much of the Cutlers' Company's Acts as applies to the summary punishment of persons counterfeiting Sheffield corporate marks, that is to say, the fifth section of the Cutlers' Company's Act of 1814, and the provisions in relation to the recovery and application of the penalty imposed by such last-mentioned section contained in the Cutlers' Company's Act of 1791, shall apply to any mark entered in the Sheffield register.

[(14.) For the purposes of this section, the expression "metal goods" means all metals whether wrought, unwrought, or partly wrought, and all goods composed wholly or partly of any metal.

(15.) For the purpose of legal proceedings in relation to trade marks entered in the Sheffield register a certificate under the hand of the Master of the Cutlers' Company shall have the same effect as the certificate of the comptroller.]

The amendments in this section were made by sect. 20 of the Act of 1888.

PART V.

General.

Patent Office and Proceedings thereat.

Patent Office. See Patents and Designs Act, 1907, s. 62.

82.—(1.) The Treasury may provide for the purposes of this Act an office with all requisite buildings and conveniences, which shall be called, and is in this Act referred to as, the Patent Office:

(2.) Until a new Patent Office is provided, the offices of the Commissioners of Patents of inventions and for the registration of designs and trade marks existing at the commencement of this Act shall be the Patent Office within the meaning of this Act.

(3.) The Patent Office shall be under the immediate control of an officer called the comptroller-general of patents, designs, and trade marks, who shall act under the superintendence and direction of the Board of Trade.

(4.) Any act or thing directed to be done by or to the comptroller may, *in his absence*, be done by or to any officer for the time being in that behalf authorised by the Board of Trade.

The words in *italics* were expunged by the Act of 1902, s. 4.

Officers and clerks. *Ibid.* s. 63.

83.—(1.) The Board of Trade may at any time after the passing of this Act, and from time to time, subject to the approval of the Treasury, appoint the comptroller-general of patents, designs, and trade marks, and so many examiners and other officers and clerks, with such designations and duties as the Board of Trade think fit, and may from time to time remove any of those officers and clerks.

(2.) The salaries of those officers and clerks shall be appointed by the Board of Trade, with the concurrence of the Treasury, and the same and the other expenses of the execution of this Act shall be paid out of money provided by Parliament.

Seal of Patent Office. *Ibid.* s. 64.

84. There shall be a seal for the Patent Office, and impressions thereof shall be judicially noticed and admitted in evidence.

Trust not to be entered in registers.

85. There shall not be entered in any register kept under this Act, or be receivable by the comptroller, any notice of any trust expressed, implied or constructive.

See T. M. A. 1905, s. 5.

This section, so far as it relates to trade marks, came from the old rules.

Refusal to grant patent, &c. in certain cases.

86. The comptroller may refuse to grant a patent for an invention, or to register a design or trade mark, of which the use would, in his opinion, be contrary to law or morality.

See T. M. A. 1905, s. 11.

Entry of assignments and transmissions in registers.

See T. M. A. 1905, ss. 33, 38.

T. M. A. 1919, s. 11.

87. Where a person becomes entitled by assignment, transmission, or other operation of law to a patent, or to the copyright in a registered design, or to a registered trade mark, the comptroller shall on request, and on proof of title to his satisfaction, cause the name of such person to be entered as proprietor of the patent, copyright in the design, or trade mark, in the register of patents, designs, or trade marks, as the case may be. The person for the time being entered in the register of patents, designs, or trade marks, as proprietor of a patent, copyright in a design, or trade mark, as the case may be, shall, subject to [the provisions of this Act and to] any rights appearing from such register to be vested in any other person, have power absolutely to assign, grant licences as to, or otherwise deal with, the same, and to give effectual receipts for any consideration for such assignment, licence, or dealing. Provided that any equities in respect of such patent, design, or trade mark may be enforced in like manner as in respect of any other personal property.

The amendment in this section was made by sect. 21 of the Act of 1888.

Inspection of and extracts from registers.

88. Every register kept under this Act shall at all convenient times be open to the inspection of the public, subject to [the provisions of

this Act and to] such regulations as may be prescribed; and certified copies, sealed with the seal of the Patent Office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee. See T. M. A. 1905, s. 7.

This section came from the old rules.
The amendment in this section was made by sect. 22 of the Act of 1888.

89. Printed or written copies or extracts, purporting to be certified by the comptroller and sealed with the seal of the Patent Office, of or from patents, specifications, disclaimers and other documents in the Patent Office, and of or from registers and other books kept there, shall be admitted in evidence in all courts in her Majesty's dominions, and in all proceedings, without further proof or production of the originals. Sealed copies to be received in evidence. See T. M. A. 1905, s. 50.

90.—(1) The Court may on the application of any person aggrieved by the omission without sufficient cause of the name of any person [or of any other particulars] from any register kept under this Act, or by any entry made without sufficient cause in any such register, make such order for making, expunging, or varying the entry, as the Court thinks fit; or the Court may refuse the application; and in either case may make such order with respect to the costs of the proceedings as the Court thinks fit. Rectification of registers by Court. See T. M. A. 1905, ss. 35, 37.

(2.) The Court may, in any proceeding under this section, decide any question that it may be necessary or expedient to decide for the rectification of a register, and may direct an issue to be tried for the decision of any question of fact, and may award damages to the party aggrieved.

(3.) Any order of the Court rectifying a register shall direct that due notice of the rectification be given to the comptroller.

This section came from sect. 5 of the Act of 1875. The amendment was made by sect. 23 of the Act of 1888.

91. The comptroller may, on request in writing, accompanied by the prescribed fee,— Power for comptroller to correct clerical errors. See T. M. A. 1905, s. 32.

(a.) Correct any clerical error in or in connection with an application for a patent, or for registration of a design or trade mark; or

(b.) Correct any clerical error in the name, style or address of the registered proprietor of a patent, design, or trade mark.

(c.) Cancel the entry or part of the entry of a trade mark on the register: Provided that the applicant accompanies his request by a statutory declaration made by himself, stating his name, address, and calling, and that he is the person whose name appears on the register as the proprietor of the said trade mark.

(d.) Permit an applicant for registration of a design or trade mark to amend his application by omitting any particular goods or classes of goods in connection with which he has desired the design or trade mark to be registered.]

The amendment in this section was made by sect. 24 of the Act of 1888.

Alteration of registered mark.
See T. M. A. 1905, s. 34.

92. (1.) The registered proprietor of any registered trade mark may apply to the Court for leave to add to or alter such mark in any particular, not being an essential particular within the meaning of this Act, and the Court may refuse or grant leave on such terms as it may think fit.

(2.) Notice of any intended application to the Court under this section shall be given to the comptroller by the applicant; and the comptroller shall be entitled to be heard on the application.

(3.) If the Court grants leave, the comptroller shall, on proof thereof and on payment of the prescribed fee, cause the register to be altered in conformity with the order of leave.

This section was taken from the old rules.

Falsification of entries in registers.
See T. M. A. 1905, s. 66.

93. If any person makes or causes to be made a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders, or causes to be produced or tendered, in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanour.

Exercise of discretionary power by comptroller.
See T. M. A. 1905, s. 53.

94. Where any discretionary power is by this Act given to the comptroller, he shall not exercise that power adversely to the applicant for a patent, or for amendment of a specification, or for registration of a trade mark or design, without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard personally or by his agent.

Power of comptroller to take directions of law officers.
See T. M. A. 1905, s. 56.

95. The comptroller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to either of the law officers for directions in the matter.

Certificate of comptroller to be evidence.
See T. M. A. 1905, s. 51.

96. A certificate purporting to be under the hand of the comptroller as to any entry, matter, or thing which he is authorised by this Act, or any general rules made thereunder, to make or do, shall be *primâ facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

This section was somewhat modified from sect. 8 of the Act of 1875.

Applications and notices by post.

97. (1.) Any application, notice or other document authorised or required to be left, made, or given at the Patent Office or to the comptroller, or to any other person under this Act, may be sent by a prepaid letter through the post; and if so sent shall be deemed to have been left, made, or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post.

(2.) In proving such service or sending, it shall be sufficient to prove that the letter was properly addressed and put into the post.

Provision as to days for leaving documents at office.

98. Whenever the last day fixed by this Act, or by any rule for the time being in force, for leaving any document or paying any fee at the Patent Office, shall fall on Christmas Day, Good Friday, or on a Saturday or Sunday, or any day observed as a holiday at the Bank of England, or any day observed as a day of public fast or thanksgiving, herein referred to as excluded days, it shall be lawful to leave

such document or to pay such fee on the day next following such excluded day, or days if two or more of them occur consecutively.

Declaration by infant, lunatic, &c.

99. If any person is, by reason of infancy, lunacy or other inability, incapable of making any declaration or doing anything required or permitted by this Act or by any rules made under the authority of this Act, then the guardian or committee (if any) of such incapable person, or if there be none, any person appointed by any court or judge possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of such incapable person, or of any other person interested in the making such declaration or doing such thing, may make such declaration or a declaration as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of such incapable person, and all acts done by such substitute shall for the purposes of this Act be as effectual as if done by the person for whom he is substituted.

This section, so far as it relates to trade marks, came from the old rules.

Transmission of certified printed copies of specifications, &c.

See Patents and Designs Act, 1907, s. 80.

100. Copies of all specifications, drawings, and amendments left at the Patent Office after the commencement of this Act, printed for and sealed with the seal of the Patent Office, shall be transmitted to the Edinburgh Museum of Science and Art, and to the Enrolments Office of the Chancery Division in Ireland, and to the Rolls Office in the Isle of Man, within twenty-one days after the same shall respectively have been accepted or allowed at the Patent Office; and certified copies of or extracts from any such documents shall be given to any person requiring the same on payment of the prescribed fee; and any such copy or extract shall be admitted in evidence in all courts in Scotland and Ireland and in the Isle of Man without further proof or production of the originals.

Power for Board of Trade to make general rules for classifying goods and regulating business of Patent Office.

See T. M. A. 1905, s. 60.

101.—(1.) The Board of Trade may from time to time make such general rules and do such things as they think expedient, subject to the provisions of this Act—

(a.) For regulating the practice of registration under this Act:

(b.) For classifying goods for the purposes of designs and trade marks:

(c.) For making or requiring duplicates of specifications, amendments, drawings, and other documents:

(d.) For securing and regulating the publishing and selling of copies, at such prices and in such manner as the Board of Trade think fit, of specifications, drawings, amendments, and other documents:

(e.) For securing and regulating the making, printing, publishing, and selling of indexes to, and abridgments of, specifications and other documents in the Patent Office; and providing for the inspection of indexes and abridgments and other documents:

(f.) For regulating (with the approval of the Treasury) the presentation of copies of Patent Office publications to patentees and to public authorities, bodies, and institutions at home and abroad:

(g.) Generally for regulating the business of the Patent Office, and all things by this Act placed under the direction or control of the comptroller or of the Board of Trade.

(2.) Any of the forms in the First Schedule to this Act may be altered or amended by the rules made by the Board as aforesaid.

(3.) General rules may be made under this section at any time after the passing of this Act, but not so as to take effect before the commencement of this Act, and shall (subject as hereinafter mentioned) be of the same effect as if they were contained in this Act, and shall be judicially noticed.

(4.) Any rules made in pursuance of this section shall be laid before both Houses of Parliament, if Parliament be in session at the time of making thereof, or, if not, then as soon as practicable after the beginning of the then next session of Parliament, and they shall also be advertised twice in the official journal to be issued by the comptroller.

(5.) If either House of Parliament, within the next forty days after any rules have been so laid before such House, resolve that such rules or any of them ought to be annulled, the same shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime under such rules or rule or to the making of any new rules or rule.

Annual reports of comptroller.
See T. M. A. 1905, s. 57.

102. The comptroller shall, before the first day of June in every year, cause a report respecting the execution by or under him of this Act to be laid before both Houses of Parliament, and therein shall include for the year to which each report relates all general rules made in that year under or for the purposes of this Act, and an account of all fees, salaries and allowances, and other money received and paid under this Act.

Proceedings of Board of Trade.
See T. M. A. 1905, ss. 52, 58.

[102A.—(1.) All things required or authorised under this Act to be done by, to, or before the Board of Trade, may be done by, to, or before the President or a secretary or an assistant secretary of the Board.

(2.) All documents purporting to be orders made by the Board of Trade and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or by any person authorised in that behalf by the President of the Board, shall be received in evidence, and shall be deemed to be such orders without further proof, unless the contrary is shown.

(3.) A certificate signed by the President of the Board of Trade, that any order made or act done is the order or act of the Board, shall be conclusive evidence of the fact so certified.]

This section was introduced by sect. 25 of the Act of 1888.

International and Colonial Arrangements.

International arrangements for protection of inventions, designs, and trade marks.

103.—(1.) If her Majesty is pleased to make any arrangement with the government or governments of any foreign state or states for mutual protection of inventions, designs, and trade marks, or any of them, then any person who has applied for protection for any invention, design, or trade mark in any such state, shall be entitled to a

patent for his invention or to registration of his design or trade mark (as the case may be) under this Act, in priority to other applicants; and such patent or registration shall have the same date as the *date of the protection obtained* [date of the application] in such foreign state.

See T. M. A. 1905, s. 65. Patents and Designs Act, 1907, s. 91.

Provided that his application is made, in the case of a patent within seven months, and in the case of a design or trade mark within four months, from his applying for protection in the foreign state with which the arrangement is in force.

Provided that nothing in this section contained shall entitle the patentee or proprietor of the design or trade mark to recover damages for infringements happening prior to the date of the actual acceptance of his complete specification, or the actual registration of his design or trade mark in this country, as the case may be.

(2.) The publication in the United Kingdom or the Isle of Man during the respective periods aforesaid of any description of the invention, or the use therein during such periods of the invention, or the exhibition or use therein during such periods of the design, or the publication therein during such periods of a description or representation of the design, or the use therein during such periods of the trade mark, shall not invalidate the patent which may be granted for the invention, or the registration of the design or trade mark:

(3.) The application for the grant of a patent, or the registration of a design, or the registration of a trade mark under this section, must be made in the same manner as an ordinary application under this Act: Provided that, in the case of trade marks, any trade mark the registration of which has been duly applied for in the country of origin may be registered under this Act:

(4.) The provisions of this section shall apply only in the case of those foreign states with respect to which her Majesty shall from time to time by Order in Council declare them to be applicable, and so long only in the case of each state as the Order in Council shall continue in force with respect to that state.

This section was new. The amendment in it was made by sect. 6 of the Act of 1885.

For list of Orders in Council, see Appendix, p. 184.

104.—(1.) Where it is made to appear to her Majesty that the legislature of any British possession has made satisfactory provision for the protection of inventions, designs, and trade marks, patented or registered in this country, it shall be lawful for her Majesty from time to time, by Order in Council, to apply the provisions of the last preceding section, with such variations or additions, if any, as to her Majesty in Council may seem fit, to such British possession.

Provision for Colonies and India.

See T. M. A. 1905, s. 65. Patents and Designs Act, 1907, s. 91 (5).

(2.) An Order in Council under this Act shall, from a date to be mentioned for the purpose in the Order, take effect as if its provisions had been contained in this Act; but it shall be lawful for her Majesty in Council to revoke any Order in Council made under this Act.

For list of Orders in Council, see Appendix, p. 184.

Offences.

Penalty on falsely representing articles to be patented.
See T. M. A. 1905, s. 67.
Patents and Designs Act, 1907, s. 89.

105.—(1.) Any person who represents that any article sold by him is a patented article, when no patent has been granted for the same, or describes any design or trade mark applied to any article sold by him as registered which is not so, shall be liable for every offence on summary conviction to a fine not exceeding five pounds.

(2.) A person shall be deemed, for the purposes of this enactment, to represent that an article is patented or a design or a trade mark is registered, if he sells the article with the word "patent," "patented," "registered," or any word or words expressing or implying that a patent or registration has been obtained for the article stamped, engraved, or impressed on, or otherwise applied to, the article.

Penalty on unathorised assumption of Royal Arms.
See T. M. A. 1905, s. 68.
Patents and Designs Act, 1907, s. 90.

106. Any person who, without the authority of her Majesty, or any of the Royal Family, or of any Government department, assumes or uses in connection with any trade, business, calling, or profession, the Royal Arms, or arms so nearly resembling the same as to be calculated to deceive, in such manner as to be calculated to lead other persons to believe that he is carrying on his trade, business, calling, or profession by or under such authority as aforesaid, shall be liable on summary conviction to a fine not exceeding twenty pounds.

This section was new.

Scotland, Ireland, &c.

107. Relates only to patents.

See T. M. A. Act, 1905, s. 72.

108. In Scotland, any offence under this Act declared to be punishable on summary conviction may be prosecuted in the Sheriff Court.

109. Relates only to patents.

110. Relates only to patents.

Patents and Designs Act, 1907, s. 94 (2).
General saving for jurisdiction of Courts.
See T. M. A. 1905, s. 69.

111.—(1.) The provisions of this Act conferring a special jurisdiction on the Court as defined by this Act, shall not, except so far as the jurisdiction extends, affect the jurisdiction of any Court in Scotland or Ireland in any proceedings relating to patents or to designs or to trade marks; and with reference to any such proceedings in Scotland, the term "the Court" shall mean any Lord Ordinary of the Court of Session, and the term "Court of Appeal" shall mean either Division of the said Court; and with reference to any such proceedings in Ireland, the terms "the Court" and "Court of Appeal" respectively mean the High Court of Justice in Ireland and her Majesty's Court of Appeal in Ireland.

(2.) If any rectification of a register under this Act is required in pursuance of any proceeding in a Court in Scotland or Ireland, a copy of the order, decree, or other authority for the rectification, shall be served on the comptroller, and he shall rectify the register accordingly.

Isle of Man.
See T. M. A. 1905, s. 70.

112. This Act shall extend to the Isle of Man, and—

(1.) Nothing in this Act shall affect the jurisdiction of the Courts in the Isle of Man, in proceedings for infringement or in any action or proceeding respecting a patent, design, or trade mark competent to those Courts;

(2.) The punishment for a misdemeanour under this Act in the Isle of Man shall be imprisonment for any term not exceeding two years, with or without hard labour, and with or without a fine not exceeding one hundred pounds, at the discretion of the Court;

(3.) Any offence under this Act committed in the Isle of Man which would in England be punishable on summary conviction may be prosecuted, and any fine in respect thereof recovered at the instance of any person aggrieved, in the manner in which offences punishable on summary conviction may for the time being be prosecuted.

Jurisdiction of Lancashire Palatine Court.

See T. M. A. 1905, s. 71.

[112A. The Court of Chancery of the County Palatine of Lancaster shall, with respect to any action or other proceeding in relation to trade marks, the registration whereof is applied for in the Manchester Office, have the like jurisdiction under this Act as her Majesty's High Court of Justice in England, and the expression "the Court" in this Act shall be construed and have effect accordingly.

Provided that every decision of the Court of Chancery of the County Palatine of Lancaster, in pursuance of this section, shall be subject to the like appeal as decisions of that Court in other cases.]

This section was introduced by sect. 26 of the Act of 1888.

Repeal; Transitional Provisions; Savings.

Repeal and saving for past operation of repealed enactments, &c.

See T. M. A. 1905, s. 73.

113. The enactments described in the Third Schedule to this Act are hereby repealed. But this repeal of enactments shall not—

(a.) Affect the past operation of any of those enactments, or any patent or copyright or right to use a trade mark granted or acquired, or application pending, or appointment made, or compensation granted, or order or direction made or given, or right, privilege, obligation, or liability acquired, accrued, or incurred, or anything duly done or suffered under or by any of those enactments before or at the commencement of this Act; or

(b.) Interfere with the institution or prosecution of any action or proceeding, civil or criminal, in respect thereof, and any such proceeding may be carried on as if this Act had not been passed; or

(c.) Take away or abridge any protection or benefit in relation to any such action or proceeding.

Former registers to be deemed continued.

See T. M. A. 1905, s. 6.

114.—(1.) The registers of patents and of proprietors kept under any enactment repealed by this Act shall respectively be deemed parts of the same book as the register of patents kept under this Act.

(2.) The registers of designs and of trade marks kept under any enactment repealed by this Act shall respectively be deemed parts of the same book as the register of designs and the register of trade marks kept under this Act.

Saving for existing rules.

115. All general rules made by the Lord Chancellor or by any other authority under any enactment repealed by this Act, and in force at

See T. M. A. 1905, s. 73.

the commencement of this Act, may at any time after the passing of this Act be repealed, altered, or amended by the Board of Trade, as if they had been made by the Board under this Act, but so that no such repeal, alteration, or amendment shall take effect before the commencement of this Act; and, subject as aforesaid, such general rules shall, so far as they are consistent with and are not superseded by this Act, continue in force as if they had been made by the Board of Trade under this Act.

Saving for prerogative.

116. Nothing in this Act shall take away, abridge, or prejudicially affect the prerogative of the Crown in relation to the granting of any letters patent or to the withholding of a grant thereof.

General Definitions.

General definitions.

See T. M. A. 1905, s. 3.

117. In and for the purposes of this Act, unless the context otherwise requires,—

"Person" includes a body corporate;

"The Court" means (subject to the provisions for Scotland, Ireland, and the Isle of Man) her Majesty's High Court of Justice in England:

"Law Officer" means her Majesty's Attorney-General or Solicitor-General for England:

"The Treasury" means the Commissioners of her Majesty's Treasury:

"Comptroller" means the Comptroller-General of Patents, Designs, and Trade Marks:

"Prescribed" means prescribed by any of the schedules to this Act, or by general rules under or within the meaning of this Act:

"British possession" means any territory or place situate within her Majesty's dominions, and not being or forming part of the United Kingdom, or of the Channel Islands, or of the Isle of Man; and all territories and places under one legislature, as hereinafter defined, are deemed to be one British possession for the purposes of this Act:

"Legislature" includes any person or persons who exercise legislative authority in the British possession; and where there are local legislatures as well as a central legislature, means the central legislature only.

In the application of this Act to Ireland "summary conviction" means a conviction under the Summary Jurisdiction Acts, that is to say, with reference to the Dublin Metropolitan Police District the Acts regulating the duties of justices of the peace and of the police for such district, and elsewhere in Ireland the Petty Sessions (Ireland) Act, 1851, and any Act amending it.

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Forms.

The Second Schedule.

Fees on Instruments for obtaining Patents and Renewal.

The Third Schedule.

Enactments Repealed.

* * * * *

38 & 39 Vict. c. 91 (1875).—The Trade Marks Registration Act, 1875.

39 & 40 Vict. c. 33 (1876).—The Trade Marks Registration Amendment Act, 1876.

40 & 41 Vict. c. 37 (1877).—The Trade Marks Registration Extension Act, 1877.

APPENDIX H.

THE INTERPRETATION ACT, 1889.

52 & 53 Vict. c. 63.

An Act for consolidating enactments relating to the Construction of Acts of Parliament and for further shortening the Language used in Acts of Parliament. [30th August, 1889.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Re-enactment of existing Rules.

Rules as to gender and number.

1.—(1.) In this Act and in every Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, unless the contrary intention appears,—

(a.) words importing the masculine gender shall include females; and

(b.) words in the singular shall include the plural, and words in the plural shall include the singular.

(2.) The same rules shall be observed in the construction of every enactment relating to an offence punishable on indictment or on summary conviction, when the enactment is contained in an Act passed in or before the year one thousand eight hundred and fifty.

Application of penal Acts to bodies corporate.

2.—(1.) In the construction of every enactment relating to an offence punishable on indictment or on summary conviction, whether contained in an Act passed before or after the commencement of this Act, the expression "person" shall, unless the contrary intention appears, include a body corporate.

(2.) Where under any Act, whether passed before or after the commencement of this Act, any forfeiture or penalty is payable to a party aggrieved, it shall be payable to a body corporate in every case where that body is the party aggrieved.

Meanings of certain words

3. In every Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, the

following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them; namely,— in Acts since 1850.

The expression "month" shall mean calendar month:

* * * * *

The expressions "oath" and "affidavit" shall, in the case of persons for the time being allowed by law to affirm or declare instead of swearing, include affirmation and declaration, and the expression "swear" shall, in the like case, include affirm and declare.

4. [Meaning of "county" in past Acts.]

5. [Meaning of "parish."]

6. [Meaning of "county court."]

7. [Meaning of "sheriff clerk," &c. in Scottish Acts.]

8. Every section of an Act shall have effect as a substantive enactment without introductory words. Sections to be substantive enactments.

9. Every Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, shall be a public Act and shall be judicially noticed as such, unless the contrary is expressly provided by the Act. Acts to be public Acts.

10. Any Act may be altered, amended, or repealed in the same session of Parliament. Amendment or repeal of Acts in same session.

11.—(1.) Where an Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, repeals a repealing enactment, it shall not be construed as reviving any enactment previously repealed, unless words are added reviving that enactment. Effect of repeal in Acts passed since 1850.

(2.) Where an Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, repeals wholly or partially any former enactment and substitutes provisions for the enactment repealed, the repealed enactment shall remain in force until the substituted provisions come into operation.

New General Rules of Construction.

12. In this Act, and in every other Act whether passed before or after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:— Official definitions in past and future Acts.

(1.) The expression "the Lord Chancellor" shall, except when used with reference to Ireland only, mean the Lord High Chancellor of Great Britain for the time being, and when used with reference to Ireland only, shall mean the Lord Chancellor of Ireland for the time being.

(2.) The expression "the Treasury" shall mean the Lord High Treasurer for the time being or the Commissioners for the time being of Her Majesty's Treasury.

(3.) The expression "Secretary of State" shall mean one of Her Majesty's Principal Secretaries of State for the time being.

* * * * *

(5.) The expression "the Privy Council" shall, except when used

with reference to Ireland only, mean the Lords and others for the time being of Her Majesty's Most Honourable Privy Council, and when used with reference to Ireland only, shall mean the Privy Council of Ireland for the time being.

* * * * *

(8.) The expression "the Board of Trade" shall mean the Lords of the Committee for the time being of the Privy Council appointed for the consideration of matters relating to trade and foreign plantations.

* * * * *

(18.) The expression "the Bank of England" shall mean, as circumstances require, the Governor and Company of the Bank of England or the bank of the Governor and Company of the Bank of England.

* * * * *

13. [Judicial definitions in past and future Acts.]

Meaning of "rules of Court."

14. In every Act passed after the commencement of this Act, unless the contrary intention appears, the expression "rules of Court" when used in relation to any Court shall mean rules made by the authority having for the time being power to make rules or orders regulating the practice and procedure of such Court, and as regards Scotland shall include acts of adjournal and acts of sederunt.

The power of the said authority to make rules of Court as above defined shall include a power to make rules of Court for the purpose of any Act passed after the commencement of this Act, and directing or authorising anything to be done by rules of Court.

15. [Meaning of "borough."]

16. [Meaning of "guardians" and "union."]

17. [Definitions relating to elections.]

Geographical and colonial definitions in future Acts.

18. In this Act, and in every Act passed after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

(1.) The expression "British Islands" shall mean the United Kingdom, the Channel Islands, and the Isle of Man.

(2.) The expression "British possession" shall mean any part of her Majesty's dominions exclusive of the United Kingdom, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one British possession.

(3.) The expression "colony" shall mean any part of her Majesty's dominions exclusive of the British Islands, and of British India, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one colony.

(4.) The expression "British India" shall mean all territories and places within her Majesty's dominions which are for the

time being governed by her Majesty through the Governor-General of India or through any governor or other officer subordinate to the Governor-General of India.

(5.) The expression "India" shall mean British India together with any territories of any native prince or chief under the suzerainty of her Majesty exercised through the Governor-General of India, or through any governor or other officer subordinate to the Governor-General of India.

(6.) The expression "governor" shall, as respects Canada and India, mean the Governor-General, and include any person who for the time being has the powers of the Governor-General, and as respects any other British possession, shall include the officer for the time being administering the government of that possession.

(7.) The expression "colonial legislature" and the expression "legislature," when used with reference to a British possession, shall respectively mean the authority, other than the Imperial Parliament or her Majesty the Queen in Council, competent to make laws for a British possession.

Meaning of "person" in future Acts.

19. In this Act and in every Act passed after the commencement of this Act the expression "person" shall, unless the contrary intention appears, include any body of persons corporate or unincorporate.

Meaning of "writing" in past and future Acts.

20. In this Act and in every other Act whether passed before or after the commencement of this Act expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.

Meaning of "statutory declaration" in past and future Acts.

21. In this Act, and in every other Act, whether passed before or after the commencement of this Act, the expression "statutory declaration" shall, unless the contrary intention appears, mean a declaration made by virtue of the Statutory Declarations Act, 1835.

22. [Meaning of "financial year" in future Acts.]

5 & 6 Will. 4, c. 62.

23. [Definition of "Lands Clauses Acts."]

24. [Meaning of "Irish Valuation Acts."]

25. [Meaning of "ordnance map."]

Meaning of "service by post."

26. Where an Act passed after the commencement of this Act authorises or requires any document to be served by post, whether the expression "serve," or the expression "give" or "send," or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

27. [Meaning of "committed for trial."]

28. [Meanings of "sheriff," "felony, and "misdemeanour" in future Scotch Acts.]

29. [Meaning of "county court" in future Irish Acts.]

References to the Crown.

30. In this Act and in every other Act, whether passed before or after the commencement of this Act, references to the Sovereign

reigning at the time of the passing of the Act or to the Crown shall, unless the contrary intention appears, be construed as references to the Sovereign for the time being, and this Act shall be binding on the Crown.

Construction of statutory rules, &c.

31. Where any Act, whether passed before or after the commencement of this Act, confers power to make, grant, or issue any instrument, that is to say, any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or byelaws, expressions used in the instrument, if it is made after the commencement of this Act, shall, unless the contrary intention appears, have the same respective meanings as in the Act conferring the power.

Construction of provisions as to exercise of powers and duties.

32.—(1.) Where an Act passed after the commencement of this Act confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(2.) Where an Act passed after the commencement of this Act confers a power or imposes a duty on the holder of an office, as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of the office.

(3.) Where an Act passed after the commencement of this Act confers a power to make any rules, regulations, or byelaws, the power shall, unless the contrary intention appears, be construed as including a power, exerciseable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, amend, or vary the rules, regulations, or byelaws.

33. [Provisions as to offences under two or more laws.]

34. [Measurement of distances.]

Citation of Acts.

35.—(1.) In any Act, instrument, or document, an Act may be cited by reference to the short title, if any, of the Act, either with or without a reference to the chapter, or by reference to the regnal year in which the Act was passed, and where there are more statutes or sessions than one in the same regnal year, by reference to the statute or the session, as the case may require, and where there are more chapters than one, by reference to the chapter, and any enactment may be cited by reference to the section or sub-section of the Act in which the enactment is contained.

(2.) Where any Act passed after the commencement of this Act contains such reference as aforesaid, the reference shall, unless a contrary intention appears, be read as referring, in the case of statutes included in any revised edition of the statutes purporting to be printed by authority, to that edition, and in the case of statutes not so included, and passed before the reign of King George the First, to the edition prepared under the direction of the Record Commission; and in other cases to the copies of the statutes purporting to be printed by the Queen's Printer, or under the superintendence or authority of Her Majesty's Stationery Office.

(3.) In any Act passed after the commencement of this Act a description or citation of a portion of another Act shall, unless the

contrary intention appears, be construed as including the word, section, or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

"Commencement."

36.—(1.) In this Act, and in every Act passed either before or after the commencement of this Act, the expression "commencement," when used with reference to an Act, shall mean the time at which the Act comes into operation.

(2.) Where an Act passed after the commencement of this Act, or any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or byelaws made, granted, or issued, under a power conferred by any such Act, is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day.

Exercise of statutory powers between passing and commencement of Act.

37. Where an Act passed after the commencement of this Act is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant, or issue any instrument, that is to say, any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or byelaws, to give notices, to prescribe forms, or to do any other thing for the purposes of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof, subject to this restriction, that any instrument made under the power shall not, unless the contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation, come into operation until the Act comes into operation.

Effect of repeal in future Acts.

38.—(1.) Where this Act or any Act passed after the commencement of this Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed, shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

(2.) Where this Act or any Act passed after the commencement of this Act repeals any other enactment, then, unless the contrary intention appears, the repeal shall not—

(a.) revive anything not in force or existing at the time at which the repeal takes effect; or,

(b.) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or

(c.) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or

(d.) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e.) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy may be

instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repealing Act had not been passed.

Supplemental.

Definition of "Act" in this Act.

39. In this Act the expression "Act" shall include a local and personal Act and a private Act.

Saving for past Acts.

40. The provisions of this Act respecting the construction of Acts passed after the commencement of this Act shall not affect the construction of any Act passed before the commencement of this Act, although it is continued or amended by an Act passed after such commencement.

Repeal.

41. The Acts described in the Schedule to this Act are hereby repealed to the extent appearing in the third column of the Schedule.

Commencement of Act.

42. This Act shall come into operation on the first day of January one thousand eight hundred and ninety.

Short title.

43. This Act may be cited as the Interpretation Act, 1889.

SCHEDULE.

Sect. 41.

ENACTMENTS REPEALED.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
7 & 8 Geo. 4, c. 28.	An Act for further improving the administration of justice in criminal cases in England.	Section fourteen.
9 Geo. 4, c. 54	An Act for improving the administration of justice in criminal cases in Ireland.	Section thirty-five.
7 Will. 4 & 1 Vict. c. 39.	An Act to interpret the word "sheriff," "sheriff clerk," "shire," "sheriffdom," and "county," occurring in Acts of Parliament relating to Scotland.	The whole Act.
13 & 14 Vict. c. 21.	An Act for shortening the language used in Acts of Parliament.	The whole Act.
29 & 30 Vict. c. 113.	The Poor Law Amendment Act of 1866.	Section eighteen, from the beginning to "can be appointed, and."
42 & 43 Vict. c. 49.	The Summary Jurisdiction Act, 1879..	In section twenty the subsections numbered (5) and (6). Section fifty.
47 & 48 Vict. c. 43.	The Summary Jurisdiction Act, 1884..	Section seven.
51 & 52 Vict. c. 43.	The County Courts Act, 1888.....	Section one hundred and eighty-seven, from the beginning to "is meant, and."

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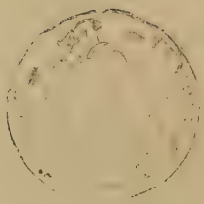

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